

RESEARCH REPORT

Truth, Reconciliation, and Redress for Racial Injustice in the United States

Insights from Experiences of Commissions Around the World

December 2022



Cover Image: Relatives of victims murdered during the guerrilla war in the Peruvian Andes in the 1980s and 1990s plant a symbolic flower in their memory, during a ceremony in the capital Lima on August 28, 2012. Peruvians affected by the war held the ceremony and marched on the ninth anniversary of the adoption of the Truth and Reconciliation Commission report to urge the government to set aside state funds to compensate victims of political violence. (Enrique Castro-Mendivil/Reuters)

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About ICTJ

The International Center for Transitional Justice works across society and borders to challenge the causes and address the consequences of massive human rights violations. We affirm victims' dignity, fight impunity, and promote responsive institutions in societies emerging from repressive rule or armed conflict as well as in established democracies where historical injustices or systemic abuse remain unresolved. ICTJ envisions a world where societies break the cycle of massive human rights violations and lay the foundations for peace, justice, and inclusion. For more information, visit www.ictj.org

CONTENTS

Executive Summary	1
Reckoning with Racial Injustice in the United States	5
What Is Transitional Justice?.....	6
Transitional Justice in the US	7
Experiences of Truth Commissions from Around the World.....	11
The Context	11
The Mandate.....	14
Who Determines the Mandate?	15
The Commission's Scope	16
The Commission's Objectives	21
The Commission's Functions	27
The Commissioners.....	29
Operations	35
Operational Structure and Staff	36
Funding.....	38
Fulfilling the Mandate.....	39
Information Collection.....	40
Documents	40
Testimony.....	42
Hearings	43
Protections	46
Public Outreach	47
Cultural and Individual Interventions.....	50
The Final Report	50
The Recommendations	52
Conclusion	61

Executive Summary

Ongoing acts of violence perpetrated against Black communities in the United States (US) are the manifestation of a legacy of oppression and inequality that is rooted in the country's history of colonialism and slavery. The US has never collectively investigated nor confronted this history to determine what can be done to change the systems that perpetuate harms to Black communities and other marginalized and oppressed groups or to redress these wrongs. Significant events in the past few years, including local, national, and global protests in response to the murders of members of Black communities in the US, have lent critical momentum to calls for society to take meaningful action to reckon with the past and help transform the future. While the US is not currently transitioning out of armed conflict or authoritarian rule as may be the case for many countries that have undertaken transitional justice approaches, it can learn from the experiences of these countries to confront its legacy of human rights violations.

The concept and practice of transitional justice offers insights, lessons, and approaches for this reckoning. It refers to the different ways in which a society can address past wrongs by promoting such aims as acknowledgment, redress, accountability, memorialization, and prevention. Transitional justice requires dealing not only with the consequences of such wrongs, but also their causes. Societies can undertake these efforts in response to events of the recent past as well as historical or long-standing injustices. Likewise, these measures can address both physical violence and atrocities in addition to economic, social, and cultural wrongs such as systemic discrimination and structural marginalization.

Truth seeking is one integral aspect of transitional justice and the investigation of past wrongs. Truth-seeking efforts can help create a shared narrative about the past, determine the factors and conditions that led to violations, and articulate proposals for further justice measures and broader transformation. Truth seeking can be accomplished by the establishment of truth commissions, which are government- or civil-society-led, non-judicial bodies of a limited duration. Given the need for acknowledgment and the opportunity to build on previous and ongoing initiatives in the US, this report examines the experiences of government-led truth commissions from around the world to identify key considerations for US stakeholders at the local, state, and national levels who may be considering their own truth commission initiatives.

However, all transitional justice processes should be formulated according to the specific dynamics of the context and needs of the affected communities. In the US, this includes the existence of historical and structural injustices and a state of democracy marked by political polarization or division. In particular, given the political landscape in the US, most existing truth-seeking initiatives have been established at the subnational—that is, state, city, or coun-

ty—level, a trend that is likely to continue, at least in the near future. Subnational efforts are critical, particularly for addressing the local dynamics of injustices and in ensuring the agency of communities, but they should also complement and inform parallel or future national-level processes. While this report draws primarily from the experiences of national truth commissions in other countries, these experiences are relevant for ongoing and future truth-seeking efforts in the US at both subnational and national levels.

As summarized below, the report focuses on the mandate, composition, operations, and performance of various truth commissions, identifying considerations that are important at a general level and those that may be especially relevant to US stakeholders advocating, designing, and implementing truth-seeking initiatives.

Mandate: A truth-seeking body must make decisions about who determines its mandate, the object of its inquiry, and its objectives. One common theme that arises from the experience of commissions in other countries is that a mandate must be formulated with input from victims and affected communities to ensure that it considers these groups' unique experiences, needs, and priorities. In the US, the legitimacy of any truth-seeking mandate will depend above all on the input of oppressed communities, including women, youth, and civil society. Undue political interference in this process must be minimized.

Given the enormous magnitude of actions, events, and issues that could be relevant to its work, any truth commission in the US will have the daunting task of determining the object of its inquiry. A commission could seek to address a particular crime related to racial injustice or to investigate the country's history of colonialism, slavery, and segregation more expansively, along with the ongoing consequences of this history. Initiatives that choose a broader mandate will need to balance a holistic approach with the need to ensure the time, resources, and support necessary for such a mandate to be feasible.

A commission's objectives in most cases include truth, victims' rights, accountability, reconciliation, prevention, and transformation. In the US, aims could include establishing a shared historical record and making recommendations for addressing structural inequalities. Given that the truth about the past is not widely accepted, the acknowledgment of racial injustice and its consequences will be key. Considering the nature of historical discrimination and injustice, respecting the rights of victims will require addressing cultural issues and providing meaningful psychosocial support. Accountability will have to address the responsibility of institutions for both civil and political rights violations and social and economic ones. Reconciliation will require fostering trust in state institutions like the police, judiciary, education system, and local governments.

Commissioners: The integrity of a truth commission depends on its selection of appropriate commissioners and its ability to function independently and without political interference or influence. Commissioners exercise discretion regarding the scope of the mandate, policies, procedures, and methods of investigation, and they represent the public face of the commission. The selection of commissioners, the support they are given, and the safeguards put in place to preserve independence and transparency are critical to the commission's legitimacy and effectiveness. Given the political polarization in the US, the integrity of commissioners will be of utmost importance and should be determined with input from the affected oppressed communities.

Operations: Truth commissions require the capacity and resources necessary to accomplish their mandates. Effective operations need a well-organized structure, properly trained staff, adequate facilities, and sufficient financial resources. These aspects of a commission are often referenced

generally in the commission's mandate and then later developed by commissioners and core staff during a preparatory phase of work. In the US, any commission will need to match the specifics of its operations (such as its thematic, technical, and geographic structure) with its potentially broad mandate. Crucially, staffing must reflect a cross-section of oppressed communities to ensure their participation and buy-in and maintain the commission's legitimacy. Given the potential scope of a commission's work, effective operations may require substantial funding. As such, transparency, autonomy, and integrity of financial arrangements will be paramount for upholding the commission's legitimacy, particularly in the current political climate.

Fulfillment of the Mandate: Once the mandate, structure, and resources are established, a truth commission must perform its functions. Many commissions approach their work in phases, often defined by tasks such as preparation, fact-finding, hearings, and report drafting, all of which are affected by factors like financing, resources, and time. That said, the core methodology generally includes information collection, public outreach, and production of a final report.

In the US, testimony and hearings will undoubtedly play an integral part of a commission's investigatory efforts. However, all such efforts must also consider affected communities' views and needs. The benefit of collecting information through testimony and hearings must be balanced with the public nature of the process, and steps should be taken to ensure broad participation with an attentiveness to confidentiality, privacy, safety, mental health, and legal protection. In addition, one challenge may be government resistance to granting access to official records. Given the vast amount of such records that are relevant to the treatment of oppressed communities in the US, to the extent possible, commissions should try to leverage the work of public and private institutions, including by drawing on existing scholarship, documentation, and mapping initiatives on issues such as slavery and the contemporary experiences of Black and other oppressed communities.

Importantly, the ability of a truth commission to achieve its objectives depends on the creation of a two-way relationship between the commission, on one hand, and the affected communities and broader public, on the other. In addition to collecting information, a commission must engage in outreach and publish its findings and recommendations. Public outreach serves to educate all stakeholders, but to do so requires adequate time and funding and, with the polarized media landscape in the US, will involve the difficult task of developing an inclusive and unbiased media strategy.

Truth commissions can also initiate or support journeys of cultural and personal change that go beyond the bounds of institutions. Such interventions can include education programs, artistic initiatives, community dialogues, psychosocial programs, and traditional ceremonies or rituals. A common element of such interventions is storytelling and dialogue, which can be initiated by truth commission hearings, outreach, and community engagement but should be envisioned as ongoing and long-term journeys. Advocates for truth seeking in the US frequently speak about the importance of such processes.

Finally, the issuance of a final report is fundamental to establishing a historical record. In the US, the improbability of including all of what is sure to be an immense amount of testimony in a single report suggests the need for complementary methods of preserving this input. The impact and legitimacy of any final report will depend on the transparency of its review process and the steps taken to ensure accessibility and minimize digital and other types of barriers.

No commission can achieve broad objectives such as truth, victims' rights, accountability, reconciliation, prevention, and transformation on its own. These constitute long-term outcomes

that a truth commission, like any transitional justice process, can only seek to meaningfully contribute to. They are outcomes toward which a society that has experienced recent or historical wrongs on a massive scale must work over time through social, political, cultural, economic, and other avenues. The set of recommendations that truth commissions make can be one of the most direct links to those other processes. In addition to helping society to understand and acknowledge what happened, truth commissions can provide guidance and direction to other actors and institutions through their recommendations.

In the US, the racial injustices to be addressed are both historical and current as well as systemic and felt by individuals in their everyday lives. It will therefore be crucial for truth-seeking efforts in the US to provide guidance on issues such as material and symbolic reparations and institutional and structural reforms, including to law enforcement and the criminal justice system, among others. The experience of truth commissions in countries around the world has shown both the role that civil society can play in pushing for the implementation of recommendations but also the necessity of a broader societal commitment to fundamental change. The window of opportunity that has been cracked in the US to make such a commitment must be pushed all the way open. Truth seeking can contribute to achieving this goal.

Reckoning with Racial Injustice in the United States

In recent years, demands to address the United States' (US) long history of racial injustice against Black communities have increased in prominence, sparked by global protests in response to the murders of George Floyd, Breonna Taylor, and numerous other Black people. Increasingly, those demanding change recognize that these murders are not isolated events; they are the manifestation of hundreds of years of racial oppression and structural inequality, rooted in the US's history of colonialism and slavery.

The structures and attitudes that perpetuate racial oppression, injustice, and inequality persist. Slavery, “Jim Crow” laws, segregation, the disenfranchisement and intimidation of Black voters, discriminatory housing and zoning policies, the prohibition against inter-racial marriage, the use of police to target Black individuals, mass incarceration and other criminal justice policies, and many other laws, policies, and events are examples of injustices against Black communities—some historical and many ongoing—that have had deeply rooted consequences and will continue to harm them further if left unaddressed.¹

The US has never collectively investigated and confronted this history to determine what steps can be taken to reform the systems that perpetuate these harms and provide redress to Black and other marginalized or oppressed communities. The events that have taken place over the past few years have created a critical moment for the country. Beyond criminal accountability, US stakeholders are being called upon to finally take meaningful action to reckon with the long history of racial injustice that has led to circumstances where Black and other oppressed communities continue to face unequal treatment and injustice in almost every aspect of their daily lives, and to find transformative paths toward repairing this harm.

Transitional justice encompasses a series of responses to massive human rights violations that can be utilized by US actors at the local, state, and national levels to address historical and systemic injustices. While transitional justice frequently follows immediately or relatively soon after periods of extreme violent conflict or government upheaval, it is an approach that can address a long history of human rights violations and deeply-rooted injustice. This approach involves “the most difficult dilemmas facing a society during some of the most troubling and

¹ For further discussion, see Virginie Ladisch and Anna Myriam Roccatello, ICTJ, “The Color of Justice: Transitional Justice and the Legacy of Slavery and Racism in the United States” (April 2021).

challenging moments of its history. It is applied when a country needs to examine its darkest moments and find a way forward to build a better future and create a more inclusive society.”²

Transitional justice emphasizes the pursuit of truth, with a view towards creating a collective history, confronting the past, and developing meaningful steps and recommendations for reform and redress. In the same way other countries have adopted transitional justice approaches to confront historical legacies of violence and discrimination, the US should also consider it as one part of a broader set of efforts to examine and reform centuries of racial injustice.

There is no one-size fits all approach to transitional justice. In the US, it could take many forms and arise in a variety of contexts. Transitional justice measures could, for example, be formed at local, state, or regional (i.e., subnational) levels or a national one. Certain initiatives could focus on a particular crime or event, while others could seek to examine the history and legacy of colonialism and slavery in a particular region. Likewise, the objectives could be numerous, such as the pursuit of truth or the development of reparations. The overall feasibility, form, and scope of different transitional justice efforts in the US will be dictated by the country’s complex legal and political landscape. Moreover, the needs of oppressed communities may vary across the US, such that what may be desirable for one community may not be what is needed or sought by others.

In developing any one of these many potential avenues, it may be useful to understand how other countries have approached transitional justice, particularly those that, either explicitly or implicitly, sought to address racial injustice and a long history of discrimination. This report draws upon the experiences of transitional justice efforts—specifically in the form of truth commissions—around the world. Our objective is to identify some of the key considerations US stakeholders should take into account when developing their own transitional justice approaches to addressing racial injustice in the US.

What Is Transitional Justice?

Transitional justice is comprised of a variety of responses to large-scale and systemic violations of human rights. Its broad objectives include the recognition of the dignity of individuals, the acknowledgment and redress of violations, and the prevention of violations from happening again.³ Where there are mass atrocities or large-scale historic injustices, transitional justice may offer a path towards these goals where traditional justice systems cannot, particularly in contexts where trust in, or resources available to, state authorities and institutions are weak.

Transitional justice puts victims and their dignity first, signaling that the country is committed to protecting them, while cautioning wrongdoers that continued violations will not be tolerated. Putting victims first can catalyze the reform of institutions, increase access to justice for society’s most vulnerable, and foster renewed faith in government institutions, including law enforcement. Accordingly, a victim-centered approach can lead to longer-lasting and more durable change and reforms. Transitional justice will look different depending on context and the claims and needs of the particular victims.

One of the most common dimensions of transitional justice is truth seeking and the investigation of historic wrongs. Truth seeking can lead to the creation of a common and shared history

2 Fernando Travesí, ICTJ, “Repairing the Past: What the United States Can Learn from the Global Transitional Justice Movement” (July 15, 2021).

3 ICTJ, “What is Transitional Justice?” www.ictj.org/about/transitional-justice.

regarding violations, assist in determining what factors and conditions have led to those violations, and thereby facilitate the development of meaningful proposals for redress and steps to prevent violations from taking place again in the future.⁴ Truth seeking can be accomplished by the establishment of truth commissions, which are official (government-led) or unofficial (civil-society-led), nonjudicial bodies of a limited duration established to determine the facts, causes, and consequences of human rights violations. Given the country's need for truth seeking, the nature of previous and ongoing truth-seeking efforts in the context of racial justice in the US, and the potential for truth seeking to catalyze other forms of justice, this report focuses on the work of official truth commissions.⁵

Transitional Justice in the US

It is widely understood that the US has failed to undertake any meaningful effort to offer redress to Black communities for its lengthy history of racial injustice. While the fact of the US's history of slavery and racism, and its connections to present-day injustices, is well documented in scholarly materials, it has not been acknowledged by the government or adequately integrated into the country's collective memory.⁶ This is equally true for many of the other historically oppressed communities in the US, including indigenous communities.

Transitional justice processes are not foreign to the US. For example, in 1980, Congress established the Commission on Wartime Relocation and Internment of Civilians to examine Executive Order 9066, which allowed the internment of persons of Japanese ancestry during World War II. After holding a series of public hearings, the commission released its findings and recommendations in a written report in which it concluded that “[a] grave injustice was done to American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed and detained by the United States during World War II.”⁷ Among its recommendations were formal apologies and monetary restitution.⁸ In 1988, the US enacted the Civil Liberties Act of 1988, in which Congress formally apologized to the victims and offered compensation in the amount of USD\$20,000 per living survivor.⁹

Individual states have also undertaken transitional justice efforts. For example, the formation of the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission began with the signing of a declaration of intent between the governor of Maine and five Wabanaki chiefs in May 2011 to investigate the experiences of the Wabanaki people with the Maine state child welfare system.¹⁰ The commission conducted a 27-month investigation and released a report summarizing its findings and detailing 14 recommendations.¹¹ Although the commission involved both state and tribal government participation, its work was funded entirely by private donations.¹²

4 For further discussion, see Eduardo González and Howard Varney (eds.), ICTJ, “Truth Seeking: Elements of Creating an Effective Truth Commission” (2013), 3-6.

5 On civil society-led truth commissions, see Eduardo González Cueva, Jill Williams, and Félix Reátegui Carrillo, ICTJ, “Civil Society-Led Truth-Seeking Initiatives: Expanding Opportunities for Acknowledgment and Redress” (April 2022).

6 Ladisch and Roccatello, “The Color of Justice.”

7 US National Archives and Records Administration, “Personal Justice Denied: Summary” (December 1982).

8 US National Archives and Records Administration, “Personal Justice Denied, Part 2: Recommendations” (June 1983).

9 US Civil Liberties Act of 1988, Public Law 100-383, August 10, 1988.

10 Esther Altvater Attean, et al., “Truth, Healing, and Systems Change: The Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission Process,” *Child Welfare* 91, 3 (2013), 16.

11 Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission, “Beyond the Mandate: Continuing the Conversation: Report of the Maine Wabanaki-State Child Welfare Truth & Reconciliation Commission” (June 14, 2015).

12 Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission, “Beyond the Mandate,” 13.

Until now, efforts relating to injustices experienced by Black communities have typically been localized and focused on specific incidents. For example, the Maryland state government formed the Maryland Lynching Truth and Reconciliation Commission to address lynchings of African Americans by white mobs in Maryland between 1854 and 1933, for which no one was ever tried, convicted, or otherwise brought to justice.¹³ The bill establishing the commission expressly recognizes that state and local government entities colluded in the commission of these crimes and conspired to conceal the identities of the parties involved. Consequently, the commission is empowered to research “(1) cases of racially motivated lynchings for which there is no documentation, should those cases be brought to the Commission’s attention; and (2) the involvement of State, country, and local government entities and relevant news media in cases of racially motivated lynching.”¹⁴ The commission is mandated to hold regional hearings and receive recommendations to address the legacy of racially motivated lynchings, and it is tasked with preparing a final report of its findings and submitting recommendations to the governor. The first hearing was held in October 2021,¹⁵ and several committee meetings were scheduled to take place throughout 2022, with further hearing dates to be announced.¹⁶

Some such efforts in the US have been led by civil society, rather than government stakeholders. For example, the Greensboro Truth and Reconciliation Commission in North Carolina was a privately funded, citizen-led independent commission mandated with investigating the deaths of five activists during anti-KKK protests in 1979.¹⁷ While there were two criminal trials and one civil trial arising from the deaths, members of the Greensboro community did not feel that justice had been served.¹⁸ The commission detailed its findings and recommendations in a 500-page report presented in May 2006, but the report was rejected by the Greensboro City Council. However, in October 2020, over forty years after the deaths of the five activists, the city council passed a resolution acknowledging the failure of the Greensboro police department and other city personnel to warn the protestors about the attacks planned by the KKK and American Nazi Party despite foreknowledge of the plans. It also acknowledged their failure to divert, stop, or arrest the perpetrators.¹⁹ The council issued a formal apology and set up a scholarship fund in memory of the victims.²⁰

To date, there have been minimal efforts on a national scale to address racial injustice in the US. In June 1997, President Clinton issued Executive Order 13050, launching his “Initiative on Race” and creating an advisory board tasked with examining race, racism, and the potential for racial reconciliation in the US.²¹ While the advisory board did issue a report with recommendations (which were considered by some to be lackluster),²² there is little evidence that they were ever implemented.

13 State of Maryland, “Maryland Lynching Truth and Reconciliation Commission,” <https://msa.maryland.gov/lynching-truth-reconciliation/>.

14 State of Maryland, House Bill 307 (2019).

15 Virginie Ladisch, ICTJ, “Opening Space for Healing and Change: Maryland Commission on Lynching Holds First Public Hearing” (October 22, 2021).

16 State of Maryland, “Maryland Lynching Truth and Reconciliation Commission: Meetings and Publications,” <https://msa.maryland.gov/lynching-truth-reconciliation/meetings-pubs.html>.

17 ICTJ advised the Greensboro Truth and Reconciliation Commission during its development and throughout its investigation.

18 Greensboro Truth and Reconciliation Commission, “Greensboro Truth and Reconciliation Commission Report: Executive Summary” (May 25, 2006), 1-2.

19 City of Greensboro, Meeting Minutes of City Council Special Meeting, “ID 20-0703: Resolution of Apology by the Greensboro City Council for the Events that Have Come to be Known as the ‘November 3, 1979 Massacre,’” (October 6, 2020), 6-17.

20 Ibid.

21 US President’s Initiative on Race, “One America in the 21st Century: Forging a New Future” (September 1998).

22 Ibid.

Presently, government stakeholders are engaging in efforts to examine and adopt truth-seeking processes on racial injustice in the US. In particular, in February 2021, Representative Barbara Lee and Senator Cory Booker re-introduced House Resolution 19 and Senate Resolution 6, which urge the establishment of a Commission on Truth, Racial Healing, and Transformation “to properly acknowledge, memorialize, and be a catalyst for progress” including “toward . . . permanently eliminating persistent racial inequities.”²³ Notably, the commission is envisioned as one that will address historic abuses against all communities of color, including, but not limited to, Black communities. Both resolutions have yet to be voted on in either the House or the Senate.

In addition, steps have been taken to study and assess reparations. From 1989 and until his death in 2017, Representative John Conyers Jr. repeatedly introduced a bill in Congress to form a Commission to Study and Develop Reparation Proposals for African Americans. Following his passing, Representative Sheila Jackson Lee reintroduced the bill, which proposes that Congress establish a commission to study and develop a reparations proposal for African Americans as a result of slavery, de jure and de facto discrimination, and their ongoing effects.²⁴ The resolution cleared the Subcommittee on the Constitution, Civil Rights, and Civil Liberties but has yet to be voted on by Congress.²⁵

Finally, various city councils have passed resolutions in support of reparations for their Black communities and have made progress in forming reparations programs.²⁶ In addition, cities are contemplating, or have developed, local commissions or task forces to consider racial discrimination in policing.²⁷ These ongoing discussions and initiatives present an opportunity to look to the experiences of other countries for relevant lessons, insights, and guidance going forward.

It is likely that truth-seeking initiatives in the US in the near future will operate at the subnational level. One study has shown that already, 80 percent of official truth commissions in the country have been or are at the city, county, or state level.²⁸ Given that current demand for such efforts has emerged primarily at the subnational level, and that national level legislation faces significant political obstacles and is supported primarily by members of the Democratic Party, this trend will likely continue.

Indeed, state and local efforts are of critical importance, particularly in addressing the local dynamics of injustice, giving agency to communities, and providing opportunities for “experimentation and innovation.”²⁹ At the same time, however, they should be understood in connection to existing or potential national-level processes. Subnational efforts can serve as “test cases” for national processes and eventually, they may be strengthened by national initiatives, which

23 US H.Con.Res.19: Urging the establishment of a United States Commission on Truth, Racial Healing, and Transformation, 117th Congress, 2021-2022; US S.Con.Res.6: A concurrent resolution urging the establishment of a United States Commission on Truth, Racial Healing, and Transformation, 117th Congress, 2021-2022.

24 US H.R.40: Commission to Study and Develop Reparation Proposals for African Americans Act, 117th Congress, 2021-2022.

25 US H.R.40: Commission to Study and Develop Reparation Proposals for African-Americans Act, Actions.

26 For example, City of Evanston, 126-R-19: A Resolution Establishing a City of Evanston Funding Source Devoted to Local Reparations, November 14, 2019; City of Asheville, Resolution Supporting Community Reparations for Black Asheville, July 14, 2020; City of Detroit, Resolution Supporting Community Reparations for Black Detroit.

27 See Tom Jackman, “Prosecutors in Three Cities Launch Commissions for Victims of Unjust Policing and Prosecution,” *Washington Post*, July 1, 2020; City of Boston, Boston Police Reform Task Force.

28 Daniel Posthumus and Kelebogile Zvobgo, “Democratizing Truth: An Analysis of Truth Commissions in the United States,” *International Journal of Transitional Justice* 15, 3 (2021), 17.

29 Ashley Quarcoo and Medina Husaković, Carnegie Endowment for International Peace, “Racial Reckoning in the United States: Expanding and Innovating on the Global Transitional Justice Experience” (October 2021), 8.

can “synthesize and amplify” their findings and recommendations.³⁰ Consequently, subnational truth seeking can be seen as a way to help lay the groundwork for future national processes.³¹

³⁰ Jen Kirby, “The Impossible Task of Truth and Reconciliation,” *Vox*, March 24, 2022; Quarcoo and Medina Husaković, “Racial Reckoning in the United States,” 33.

³¹ Tim Murithi, “A U.S. Truth Commission? Insights from South Africa,” *Justice Info*, June 30, 2020.

Experiences of Truth Commissions from Around the World

To begin to address the racial injustices committed against Black and other oppressed communities in the US, US stakeholders must pursue and acknowledge the truth of these injustices. One approach commonly adopted by countries around the world is the use of truth commissions. Accordingly, this report draws from the experiences of several of these commissions, including those that have, either explicitly or implicitly, sought to address a long history of injustices, racism, discrimination, and structural inequality. The report briefly reviews the context in which each commission arose; each commission's mandate, scope of operations, and recommendations; and each commission's overall performance vis-à-vis its mandate. Throughout, we highlight features and considerations that may have particular relevance for US stakeholders seeking to establish truth commissions to address racial injustices in the US. While this report draws primarily from the experiences of national commissions in other countries, the lessons learned are relevant for ongoing and future truth-seeking efforts in the US at both the subnational and national levels.

The Context

Transitional justice processes should be formulated to respond to the specific context and needs of affected communities. As such, to better understand the examples of commissions that will be discussed in this report, we provide below a short summary of each of the contexts from which the examples of truth commissions will be drawn.³² While brief, these summaries point to a number of contextual factors that are similar to those that will need to be considered in the US, including the existence of historical and structural injustices and a state of democracy marked by political polarization or division.

Burundi's Truth and Reconciliation Commission (CVR) (2014 – Present): The Burundian CVR was established after over forty years of extreme and violent conflict occurring along ethnic lines between the Hutu and Tutsi, following Burundi's independence from Belgium in July 1962. This period included multiple genocides and resulted in hundreds of thousands of refugees and displaced persons. In 2000, the international community, led by former South African President Nelson Mandela and former Tanzanian President Julius Nyerere, facilitated peace

³² The authors note that a brief summary risks oversimplifying the complex factors underlying each truth commission. Accordingly, the information provided herein is provided solely as an introduction to the different nature of contexts in which truth commissions can arise.

talks. The talks concluded in the Arusha Peace and Reconciliation Agreement for Burundi, which called for the creation of, among other things, the CVR. Fourteen years later, in 2014, the CVR was finally established amidst ongoing political turmoil and human rights violations.

Canada's Truth and Reconciliation Commission (TRC) (2009 – 2015): The Canadian TRC was established to investigate the government's long history of utilizing a residential school system (referred to as Indian Residential Schools, or IRS) as part of an overall campaign to eliminate indigenous culture from Canada, including by the forcible separation of indigenous children from their families. In 1991, after National Chief of the Assembly of First Nations Phil Fontaine publicly disclosed his personal experience of abuse in the IRS system, Canada was prompted to create the Royal Commission on Aboriginal Peoples (RCAP) to investigate allegations arising from the IRS. RCAP's work culminated with the issuance of a report in 1996 containing 440 recommendations, including one to establish a government-led inquiry into the IRS. The state did not do so and, by 2001, approximately 8,500 lawsuits had been filed against the government, churches, and/or individual defendants for their roles in the abuses that took place at the IRS. In 2006, the government concluded the Indian Residential Schools Settlement Agreement (IRSSA) which, among other things, created the mandate for the Canadian TRC. The TRC began its work in 2009.

Guatemala's Commission for Historical Clarification (CEH) (1997 – 1999): The Guatemalan CEH was established after more than three decades of civil war between the government and guerilla forces, during which it is estimated that over 200,000 persons were killed or disappeared and over one million people were displaced. Underlying the emergence of the civil war were centuries of economic, cultural, and social strife between a landed class and the systematically oppressed Mayan, Garifuna, and Xinca ethnic groups, who were deemed inferior by the ruling populations. During the civil war, the government targeted Mayan ethnic groups as alleged allies of the guerrillas, subjecting the Mayan people to massacres, forced disappearances, rape, and the executions of Mayan leaders. In addition, students, teachers, union leaders, journalists, and members of grassroots organizations and the Catholic Church were assassinated, disappeared, or exiled. In June 1994, the government and guerilla forces signed the Oslo Accord. In December 1996, they also signed the Peace Accords, which established the CEH. The CEH began its investigatory work in September 1997.

Kenya's Truth, Justice and Reconciliation Commission (TJRC) (2009 – 2013): The Kenyan TJRC was established in response to post-election violence that took place after the disputed 2007 presidential election, resulting in over a thousand people killed and hundreds of thousands displaced. Countless more were subjected to human rights abuses committed by civilians as well as state authorities. The post-election violence was perpetrated largely along ethnic lines and was motivated in part by long-held grievances over land issues and discrimination rooted in Kenya's colonial history. In fact, discussions regarding the establishment of a truth commission had begun as early as the 1990s to address these longstanding ethnic and political tensions. In January 2008, the African Union appointed a three-member Panel of Eminent African Personalities to mediate the post-election crisis, including former United Nations (UN) Secretary-General Kofi Annan, former Mozambican Minister and First Lady Graça Machel, and former President of Tanzania Benjamin Mkapa. This mediation eventually led to the signing of the National Accord and Reconciliation Act in February 2008, through which the parties established a coalition government. The parties agreed to the establishment of the TJRC, and in October 2008, the Kenyan National Assembly enacted the Truth, Justice and Reconciliation Act, with the TJRC officially constituted in August 2009.

Mauritius's Truth and Justice Commission (TJC) (2009 – 2011): The Mauritian TJC was established to explore the history and impact of slavery and indentured servitude in Mauritius, which began in the 1600s when the Dutch formally colonized the island. During Mauritius' history as a colony throughout Dutch, French, and British rule, the number of slaves increased dramatically, and they were treated as private property with no property or rights of their own. While the British parliament eventually outlawed slavery in Mauritius, many slaves were forced to remain on plantations working for paltry wages or as indentured servants, in similar conditions to what they experienced as slaves. By 1980, sugar cultivation on the island had mostly shut down, leaving many former indentured servants and the decedents of servants and slaves with little opportunity for economic advancement. While former indentured servants were officially able to acquire land, a *de facto* caste system formed in Mauritius, in which free people and those of French and British origin were granted greater access to economic opportunities. Efforts to form a commission on truth and justice in Mauritius addressing slavery began as early as 1999. In 2007, after multiple attempts, the government created a task force to prepare recommendations to parliament regarding a commission. The law forming the TJC was passed in 2008, and the TJC was constituted in 2009.

Peru's Truth and Reconciliation Commission (CVR) (2001 – 2003): The Peruvian CVR was established following a 20-year conflict that erupted during Peru's first democratic presidential election in 1980. The conflict involved insurgent forces (in particular, the *Partido Comunista del Perú Sendero Luminoso*, or Shining Path) and the government and military. However, as would be revealed by the Peruvian CVR's work, during this period, Peru's indigenous populations, having already experienced centuries of racism and marginalization, suffered the greatest harm. At least 70 percent of victims of the conflict were indigenous, native Quechua speakers. Peru's indigenous communities were caught in the middle of the conflict—armed by the government to defend against the insurgents but also accused of being Shining Path members. In addition, Alberto Fujimori, who was elected president in 1990, used the conflict as justification to subvert democratic institutions and consolidate power. He passed legislation targeting dissent and subversion and eventually transformed the judiciary into an instrument of repression under the guise of fighting terrorism. Fujimori was elected president for a third term, but allegations of political interference during the elections led to widespread protests, and he ultimately fled to Japan and was removed from office. The transitional government of Valentín Paniagua Corazao formed the Peruvian CVR in June 2001.

South Africa's Truth and Reconciliation Commission (TRC) (1995 – 2002): The South African TRC was created after the end of apartheid, a system of legally enforced racial segregation lasting from 1948 to 1991 that was dismantled during the country's transition to legitimate, multi-racial democratic rule. The roots of apartheid stretched far back into South Africa's past, including nearly 200 years of slavery and 400 years of human rights violations. This era stripped Black South Africans of their dignity, removed them from their land and property, and displaced families, generating vast human suffering. Held in place by state-sponsored violence, the process of dismantling apartheid in the early 1990s brought about the most violent and deadly period in the country's modern history, with more people dying in political conflict in this period than in the preceding 40 years. The transition out of this period included a multi-party negotiating process, the National Peace Accord and its structures, the Transitional Executive Council, an interim constitution, and a final constitution making process. The African National Congress (ANC) proposed a nationwide truth commission before the country's first fully democratic elections in 1994. In the aftermath of the ANC's sweeping electoral victories, the interim constitution was passed. Its final chapter, or "postamble," laid the groundwork for establishing the South African TRC.

South Korea's 2005 Truth and Reconciliation Commission (TRC) (2005 – 2010): The South Korean TRC was established to address historical human rights violations committed in the country from 1910 to the present by both state and non-state actors, including violations which took place during Japan's occupation of Korea and the Korean War. The commission was the successor to several earlier commissions that were limited in focus to specific historical events. Following his election in 2003, President Roh Moo-hyun expressed concern that these discrete commissions would result in the proliferation of narrowly focused measures that would repeatedly trigger reparations mechanisms. Accordingly, he proposed a TRC to function as a single vehicle to address all past harms, and one was established by legislation in 2005. However, when the government changed power in 2008, the conservative government led by President Lee Myung-bak opposed the continued operations of the TRC on the alleged basis that its work undermined internal harmony and relations with the US. The president appointed a new, conservative head of the TRC and cut the budget. Ultimately, the work of the commission concluded in 2010 without completing its entire mandate. In May 2020, amid ongoing debates regarding the efficacy of the 2005 commission, the government formed a new TRC tasked with resuming investigations left unfinished in 2010, as well as commencing new investigations into recently uncovered human rights violations that were allegedly perpetrated or sanctioned by the South Korean government.

Norway's Truth and Reconciliation Commission (2018 – Present) / Finland's Truth and Reconciliation Commission (2021 – Present) / Sweden's Truth Commission (2021 – Present): Norway, Finland, and Sweden have each established truth commissions relating to the treatment of the Sámi people, an indigenous group originating from northern Scandinavia. Throughout the 19th and 20th centuries, the Sámi in Finland, Norway, and Sweden were subject to forced assimilation campaigns carried out by the majority populations in those countries. The campaigns aimed to suppress the Sámi languages, culture, and identity, and they were informed by the view that the Sámi were racially distinct and inferior to the majority population. In recent years, Sámi groups, including the Sámi Parliaments in each of Norway, Finland, and Sweden, have advocated the establishment of truth and reconciliation commissions to address past abuses against their people. Norway's commission was established in 2018, while Finland and Sweden's respective commissions were established in 2021.

The Mandate

A commission's mandate sets out the parameters of its work, including its scope and objectives.³³ In addition, the mandate may address the operational aspects of the commission's work, including the powers and the procedures required to achieve its mission. Establishing the mandate is one of the first steps to establishing a commission.

As noted above, commissions addressing racial injustice in the US will likely take many forms and arise in different contexts. For example, they could be created at the subnational or national levels. Their mandates could seek to address a particular crime related to racial injustice in the US or be formulated expansively to include an investigation of the US's history of colonialism, slavery, and segregation, as well as the vast consequences of this history, including ongoing discrimination and marginalization. Indeed, one of the daunting aspects of creating truth commissions addressing racial injustice in the US is the enormous magnitude of the actions, events, and issues that could be relevant to their work, which cannot be distilled or fully encapsulated by a

³³ For a guide to considerations when drafting a mandate for a truth commission, see Eduardo González, ICTJ, "Drafting a Truth Commission Mandate: A Practical Tool" (June 2013).

singular focus. Any such commission, therefore, may have to balance the legitimacy of a broad mandate with the need to ensure sufficient time, resources, and support and to make difficult decisions about focus and prioritization.

Possible objectives for commissions in the US could include, among others, establishing a shared historical record and providing tangible recommendations for addressing deeply rooted structural inequalities, including transformation and reform of institutions and monetary reparations. Given that the truth about its past is not widely accepted by the US population or government representatives, the formal acknowledgment of racial injustice and its consequences will be among the most important tasks of any commission. Considering the nature of historical discrimination and racial injustice in the US, respecting the rights and dignity of victims will require attention to cultural issues, psychosocial support, and the need for long-term reparations. Accountability will have to confront institutional responsibility, not only for civil and political rights violations but also (and equally) for social and economic ones. Reconciliation will require building or rebuilding trust in long-standing state institutions like the police, judiciary, education, and local governments.

In the rest of this section, we review the work of prior and ongoing commissions and their approaches to developing their mandates, including an overview of who determines the mandate, the scope of the commission's inquiry, and its objectives. The common lesson to be understood from the work of prior commissions is that a mandate must be formulated with input from victims and affected communities to ensure the commissions take into account their unique experiences and are formulated to address their objectives and needs. In the US, the legitimacy of any truth-seeking mandate will depend above all on the input of Black and other oppressed communities, including women, youth, and civil society, as well as the minimization of political interference.

Who Determines the Mandate?

In developing a commission's mandate, the question will arise as to who can and should provide input. A commission can be created by the government, either its executive or legislative branch, but it can also be created by civil society or other non-government institutions.³⁴ Stakeholders in the development of any US commission on racial injustice could include victims and survivors, affected communities, government representatives at the subnational and national levels, community leaders, religious leaders, local organizations, international organizations, and student groups (some of these categories of stakeholders may overlap).

In all the examples reviewed for this report, the commissions' respective mandates were determined with input from government stakeholders. However, the extent to which others, such as civil society and victim communities, participated in the determination of the mandate varied broadly and appears closely linked to the context in which the commission arose. Notably, civil society and victim communities have played an important role in the formation of recent commissions that have sought to directly address historic injustices and racial discrimination. For example, many of the mandates of commissions seeking to address discrimination against indigenous communities were created with direct input from representatives of those populations. In Canada, the TRC's mandate was agreed through a settlement agreement between victims of the

34 González and Varney (eds.), "Truth Seeking," 9-10.

IRS system and the Canadian government.³⁵ In Norway,³⁶ Finland,³⁷ and Sweden,³⁸ the respective governments worked alongside and consulted (to varying degrees) with Sámi communities when developing their respective commissions' mandates. In Sweden, the Sámi Parliament submitted a request to the Swedish government to provide input into the development of the mandate, and the government allocated funds to the Sámi Parliament to develop its proposal.³⁹

Soliciting and incorporating the input of oppressed communities, including women and youth, is both achievable and, in fact, necessary. To ensure the foundational purpose of transitional justice is achievable (to respect and restore the dignity of victims, to acknowledge truth, and to facilitate meaningful redress and reform), affected communities must have a voice in defining critical components of a commission's mandate including: the violations to be covered, the period to be investigated, the commission's investigative powers, the expected products, the weight to be given to recommendations, the lifespan of the commission, and the its composition.⁴⁰

Ensuring that victims and civil society have input into the formation of commissions in the US will also increase the legitimacy of their work and, ultimately, increase the likelihood that they will have a longstanding and meaningful impact. Where a commission's mandate has included the investigation of historic discrimination, a reliance solely on political actors and a failure to sufficiently consult with affected communities at the earliest stages of the commission's work has negatively impacted public perception of its legitimacy. In Mauritius, where the TJC's mandate was expressly defined as "mak[ing] an assessment of the consequences of slavery and indentured labour during the colonial period up to the present,"⁴¹ some criticized the lack of consultation with members of Creole communities—many of whom are descendants of slaves—in the development of the TJC's mandate. The failure to engage with Creole communities created the perception that the TJC was a product of an agreement between politicians and ultimately stymied engagement.⁴² In this regard, while participation and buy-in from those that fall within the scope of responsibility, like government institutions, are necessary components of a commission's work, US stakeholders must consult with Black and other oppressed communities and be wary of political interference (perceived or actual). For US commissions on racial injustice, politics cannot undermine the needs of Black and oppressed communities and their best interests.

The Commission's Scope

A commission's mandate will address the scope of its investigations—i.e., establishing what happened, how it happened, when it happened, where it took place, who is responsible, and who was affected. A commission's mandate should outline the acts or crimes that the commission will be required to investigate and the relevant geographic scope and time periods relevant to that investigation. For example, mandates may identify specific categories of violations or crimes to be investigated (i.e., physical human rights violations, social and economic rights violations, war crimes, etc.). Sometimes, they specifically refer to crimes committed against a

35 Kim Stanton, "Canada's Truth and Reconciliation Commission: Settling the Past?" *International Indigenous Policy Journal* 2, 3 (2011), 4; Indian Residential Schools Settlement Agreement (Canada), May 8, 2006.

36 UIt The Arctic University of Norway, The Truth and Reconciliation Commission, https://uit.no/kommissjonen/mandat_en.

37 Office of the Prime Minister (Finland), Establishing a Truth and Reconciliation Commission Concerning the Sámi People, October 31, 2019.

38 Sámi Parliament (Sweden), "Preparations Before a Truth Commission on the Violations of the Sami People by the Swedish State" (2021); Ministry of Culture (Sweden), Committee Directive 2021:103, Mapping and Examination of the Policy That Has Been Carried Out towards the Sami and Its Consequences for the Sami People, November 4, 2021.

39 Ibid.

40 Cristián Correa, Julie Guillerot and Lisa Magarrell, ICTJ, "Reparations and Victim Participation: A Look at the Truth Commission Experience" (2009), 11-12.

41 Truth and Justice Commission Act (2008) (Mauritius), Article 3(1).

42 Richard Croucher, Mark Houssart, and Didier Michel, "The Mauritian Truth and Justice Commission: Legitimacy, Political Negotiation, and the Consequences of Slavery," *African Journal of International and Comparative Law*, 25, 3 (2017), 335-38, 341-44.

particular group, such as women, children, and other vulnerable populations. Often, they identify the time period and regional scope of the commission's inquiry.

Among the commissions reviewed in this report, several expressly identified the investigation of historic discrimination and its causes and consequences as objects of their mandate. In Mauritius, the TJC's mandate included the investigation of slavery and indentured labor.⁴³ The Sámi commissions likewise refer to the investigation of historical and current discrimination or discriminatory policies. For example, in Finland, the TRC's mandate refers expressly to gathering the experiences of the Sámi people to form a common understanding of historical and current discrimination, as well as working to dismantle and deal with intergenerational traumas.⁴⁴ Certain mandates also instruct the commission to investigate the consequences of discrimination. In Canada, the TRC was mandated to examine "the effect and consequences of IRS (including systematic harms, intergenerational consequences and the impact on human dignity) and the ongoing legacy of the residential schools."⁴⁵ The Finland TRC's mandate also instructs the TRC to consider how violations of Sámi communities' rights have affected the current situation of the Sámi people.⁴⁶

In certain cases, commissions contemplate the review of historic discrimination less explicitly by requiring an investigation into the "antecedents" of an internal conflict or violations of human rights. The South African TRC's period of inquiry was the apartheid era, but while the establishing legislation did not expressly refer to the investigation of racial discrimination, it did call for addressing "gross violations of human rights" and "establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights . . . including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations."⁴⁷ While in Kenya, the TJRC was created as a direct response to post-election violence and covered a 40-year period, its object included determining the "antecedents, circumstances, factors, and context of such violations" along with the "motives" of the perpetrators.⁴⁸ Among the TJRC's express functions was to "inquire into and establish the reality or otherwise of perceived economic marginalization of communities and make recommendations on how to address the marginalization" and "inquire into the causes of ethnic tensions and make recommendations on the promotion of healing, reconciliation and co-existence among ethnic communities."⁴⁹ This was also the case in Burundi, where the CVR was directed to determine the nature, causes, and extent of the violations, including the antecedents, circumstances, factors, contexts, motives, and prospects which led to these violations.⁵⁰ In Peru, the CVR was instructed to consider the political, social, and cultural conditions that contributed to the violence that was the subject of the commission's work.⁵¹

43 Truth and Justice Commission Act (Mauritius), Article 3(1).

44 Office of the Prime Minister (Finland), Establishing a Truth and Reconciliation Commission Concerning the Sámi People, Section 3.3.

45 Indian Residential Schools Settlement Agreement (Canada), Schedule "N:" Mandate for the Truth and Reconciliation Commission, May 8, 2006, 1(f).

46 Office of the Prime Minister (Finland), Establishing a Truth and Reconciliation Commission Concerning the Sámi People, Section 3.3.

47 Promotion of National Unity and Reconciliation Act 34 of 1995 (South Africa), Section 3.

48 Truth, Justice, and Reconciliation Act (2008) (Kenya), Section 5(a)(i), (iii).

49 Ibid., Section 6(p), (s).

50 Law No. 1/18 of 15 May 2014 on the Creation, Mandate, Composition, Organization and Operation of the Truth and Reconciliation Commission (2014) (Burundi), Article 6(1)(d); Law No. 1/022 of 6 November 2018 Amending the Law No. 1/18 of 15 May 2014 on the Creation, Mandate, Composition, Organization and Operation of the Truth and Reconciliation Commission (2018) (Burundi), Article 6(2)(d).

51 Supreme Decree No. 065-2001-PCM (Peru), Article 2(a).

Mandates that seek to address discrimination and historical injustice, as well as their antecedents and consequences, have proven to be enormous tasks to fulfill. In Kenya, the TJRC had an extraordinarily broad mandate encompassing a wide range of violations, which ultimately proved unrealistic for a commission that was marred by other financial and political challenges that undermined the overall effectiveness of the commission's work.⁵² On the other hand, affected communities may be dissatisfied if a mandate is perceived to be too narrow. In Canada, some commentators argued that the mandate's singular focus on the IRS, as opposed to the trauma faced by indigenous persons more generally, hampered the possibility of building a holistic narrative and limited the possibility of reconciliation.⁵³

Ultimately, the scope of a commission's mandate must be balanced with the need to grant that commission sufficient time, resources, participation, and support to ensure it is capable of accomplishing its task. In its final report, the South Africa TRC stated that one of its greatest challenges was that the two-year period (during which it was expected to complete its investigation of gross human rights violations occurring over a 35-year period) began on the day the commissioners were formally appointed, with no start-up period during which administrative matters (like findings offices and hiring staff) and methodologies could be developed.⁵⁴ The Guatemalan CEH had a broad mandate to investigate all human rights violations and acts of violence connected with the 34 years of armed conflict that caused the Guatemalan population to suffer.⁵⁵ However, the CEH was given only six months to complete its work, with an optional extension of a further six months. When it became clear that the CEH would not be able to accomplish more than superficial work during a six-month period, it was extended to roughly two years. The additional time proved to be essential to allow victims to come forward and participate in the process. The Mayan population in the most affected parts of the country initially hesitated to participate, but with time, many ultimately made use of the historic opportunity to share their experiences. Moreover, despite its extensive mandate, the CEH decided to prioritize the investigation of certain crimes (namely, attacks on life and personal integrity).⁵⁶ Thus, where a commission's object is very broad, the task of focusing and prioritizing the actual work and rendering it more feasible may fall upon the discretion of the commissioners. This means that the quality of the commissioners is critical. Considerations in relation to their selection and qualifications are addressed in further detail below.

Finally, a mandate may also identify the groups or individuals who will be the subject of the investigation. Whether a mandate specifies the subjects of the inquiry varies significantly across commissions and may depend once again on context, the ultimate objectives, and political dynamics. A common element among mandates is the instruction to identify the responsible government authorities. While some mandates limit their investigations to acts committed by government actors, others include armed opposition groups, international actors, corporations, and other private citizens. For example, among the South African TRC's functions was the facilitation of inquiries into the identities of all persons, authorities, institutions, and organizations involved in gross violations of human rights.⁵⁷ The Burundi CVR's mandate expressly states that its subjects include violations committed by state institutions, individuals, and private groups.⁵⁸

52 Elena Naughton, ICTJ, "Kenya: Case Study" in ICTJ and Kofi Annan Foundation, "Challenging the Conventional: Can Truth Commissions Strengthen Peace Processes?" (June 2014).

53 Virginia Arsenault, Swisspeace, "Working Paper: Resistance to the Canadian Truth and Reconciliation Commission" (2015), 29.

54 Truth and Reconciliation Commission of South Africa, "Truth and Reconciliation Commission of South Africa Report, Vol. 1" (October 29, 1998), 137.

55 Agreement on the Establishment of The Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused the Guatemalan Population to Suffer (Guatemala), June 23, 1994, Purpose, Clause I.

56 Christian Tomuschat, "Clarification Commission in Guatemala," *Human Rights Quarterly* 23, 2 (May 2001), 239-42.

57 Promotion of National Unity and Reconciliation Act 34 of 1995 (South Africa), Section 4(a)(iii).

58 Law No. 1/18 of 15 May 2014 (Burundi), Article 6(1)(b); Law No. 1/022 of 6 November 2018 (Burundi), Article 6(2)(b).

For more on some of the challenges related to the CVR's mandate, see Box 1. Other commissions' mandates, like Mauritius's, leave the identity of the subject vague.⁵⁹

Box 1: Changing the Mandate in Burundi

In 2018, four years after the CVR began its work, the government (led by a political party that opposed the legitimacy of the CVR) expanded the CVR's mandate to triple the time period originally envisaged, changing the starting point from 1962 to 1885, while still ending with December 2008. In introducing this change, government leaders explained that this expansion was necessary because the harms suffered by Burundi were rooted in its colonial history. However, some members of Burundi's civil society understood this change to be an effort to blame colonists for the entirety of the harm suffered by Burundians, and therefore deflect blame from current political parties and actors.

Moreover, despite changing the starting date for investigations, the government declined to expand the commission's mandate to include atrocities committed after 2008, despite proposals from some Burundian officials. The government's explanation for this refusal was that after 2008, there were mechanisms and institutions in place to deal with such crimes, including a working and independent judicial system. However, there is considerable evidence that serious human rights violations have taken place since 2008. In 2018, the UN Commission of Inquiry accused the Burundian government of promoting a climate conducive to ongoing human rights abuses and concluded that the current political situation is not a favorable one for the operation of a truth commission.*

*Ephrem Rugiririza, "Burundi: The Commission of Divided Truths," *Justice Info*, November 25, 2019; Ephrem Rugiririza, "Burundi: A Truth Commission as Political Diversion," *Justice Info*, November 1, 2018.

The key lesson from the experience of other commissions is that determining the appropriate scope will always be context specific. It must be informed by the needs and expectations of affected communities, and it requires balancing numerous factors, including the time and resources afforded to a particular commission. Table 1 summarizes the scope of various commissions as examples. The object of any US commission on racial injustice could be wide-ranging: it could be formulated to address a specific crime, including its causes and consequences, or it could be formulated expansively to include the investigation of hundreds of years of racism across the US. Ultimately, the experiences and needs of Black and other oppressed communities in the US are not homogenous, and US stakeholders must think carefully about the scope that will best serve them. A variety of approaches may be needed to comprehensively address racial injustice in the country. For example, one approach proposed by scholars is for subnational commissions to work alongside a national one, allowing each subnational body to be more tailored to the needs of a particular community, while the national commission can consider more general issues like matters of reparations. Because violations are legislated at different levels, such as the city and state, different responses are needed at each one.

59 Truth and Justice Commission Act (Mauritius), Article 4.

Table 1: The Scope of Various Commissions: An Overview

Jurisdiction	Period Addressed	Events or Crimes Covered	Length of Operations
Burundi	1962 – 2008 (original)	Serious violations of human rights and international humanitarian law, and serious violations of political, civil, economic, and social rights, including determining the nature, causes, and extent of the violations, and including the antecedents, circumstances, factors, contexts, motives, and prospects which led to these violations.	Instructed to complete its work within four years, which may be extended by Parliament.
	1885 – 2008 (updated in 2018)		Actual length: Ongoing
Canada	1870s – 1997	IRS experiences, impacts, and consequences.	Instructed to complete its work within five years. Actual length: 2008 – 2015
Finland	Not specified	Historical and current discrimination of the Sámi, including the state’s assimilation policy and violations, and to determine how discrimination has affected the Sámi and their communities.	Instructed to complete its work by December 31, 2023. Actual length: Ongoing
Guatemala	1962 – 1996	Human rights violations and acts of violence that caused the Guatemalan population to suffer, connected with the armed conflict, including internal and external factors.	Instructed to complete its work within six months, a period which could be extended by the CEH for a further six months. Ultimately, the CEH was granted two six-month extensions and completed its work after 18 months. Actual length: 1997 – 1999
Kenya	1963 – 2008	Violations and abuses of human rights and economic rights, including the antecedents, circumstances, factors, and context of such violations, perspectives of victims, and motives and perspectives of the persons responsible for commission of the violations.	Instructed to complete its work within two years. Actual length: 2009 – 2013
Mauritius	1638 – present (2011)	Consequences of slavery and indentured labor in Mauritius.	Instructed to complete its work within 24 months, which could be extended by six months. Actual length: 2009 – 2011
Norway	Not specified	The Norwegianization policy towards the Sámi and Kvens (Norwegian Finnish peoples) and its consequences.	Instructed to complete its work by June 1, 2023. Actual length: Ongoing
Peru	1980 – 2000	Terrorist violence and human rights violations, including the political, social, and cultural conditions, as well as the behaviors that contributed to the tragic situation of violence that Peru went through.	Instructed to complete its work within 18 months, which could be extended by five months. Actual length: 2001 – 2003
South Africa	1960 – 1994	Gross violations of human rights, including the antecedents, circumstances, factors, and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations.	Instructed to complete its work by 1998. Actual length: 1995 – 2002 (The final report was presented to President Nelson Mandela in October 1998, but the Amnesty Committee continued its work until 2002.)

(continued)

Table 1 (continued)

Jurisdiction	Period Addressed	Events or Crimes Covered	Length of Operations
South Korea (2005)	1945 – 2005	Human rights abuses, violence, and massacres since the period of Japanese rule to the present time. The facts around those who participated in the anti-Japanese movements and efforts by overseas Koreans to uphold Korea’s sovereignty and enhance its national prestige.	Instructed to investigate petitions for two years, which could be extended by two years. Actual length: 2005 – 2010
Sweden	Not specified	Policies pursued in Sweden against the Sámi and their consequences.	Instructed to complete its work by December 1, 2025. Actual length: Ongoing

The Commission’s Objectives

A commission’s mandate will set out the objectives and outcomes expected from the commission’s work and often refer directly to the fundamental principles of transitional justice. A commission’s objectives can be described differently, but generally fall into the following categories:

- Establishing the truth about crimes and events
- Protecting, recognizing, and restoring the rights of victims
- Bringing the actors, networks, and institutions most responsible to account
- Preventing the occurrence of future harms
- Fostering reconciliation by building or rebuilding relationships

Truth: All the commissions identify “truth” as one of their objectives. The determination “truth” broadly refers to the establishment of key facts relevant to a crime or event. Where historical facts and records regarding crimes and events are unknown, disputed, or denied, creating a detailed record of these events may be a commission’s foremost objective.⁶⁰ Many commissions emphasize the creation of a common history and understanding of events as their primary aim. For example, in Guatemala, the CEH, whose name translates into the “Commission for Historical Clarification,” was tasked with “clarify[ing] with all objectivity, equity and impartiality” the human rights violations and violence that occurred during more than thirty years of armed conflict.⁶¹ The Canadian TRC included among its objectives, as reflected in Box 2, creating as complete a historical record as possible of the IRS system and legacy, and preserving that record for public access.⁶² In Norway, the TRC’s mandate likewise emphasizes establishing a common understanding of the Norwegian authorities’ and society’s treatment of the Kven and

60 González and Varney (eds.), “Truth Seeking,” 9.

61 Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused the Guatemalan Population to Suffer (Guatemala), Purpose, Clause I.

62 Indian Residential Schools Settlement Agreement (Canada), 1(e).

Box 2: Goals of the Canadian TRC

The mandate for the Canadian TRC was appended as a schedule to the settlement agreement entered into between the Canadian government and the various plaintiffs. The goals of the TRC were enumerated as follows:

The goals of the Commission shall be to:

- a. Acknowledge Residential School experiences, impacts and consequences;*
- b. Provide a holistic, culturally appropriate and safe setting for former students, their families and communities as they come forward to the Commission;*
- c. Witness, support, promote and facilitate truth and reconciliation events at both the national and community levels;*
- d. Promote awareness and public education of Canadians about the IRS system and its impacts;*
- e. Identify sources and create as complete an historical record as possible of the IRS system and legacy. The record shall be preserved and made accessible to the public for future study and use;*
- f. Produce and submit to the Parties of the Agreement a report including recommendations to the Government of Canada concerning the IRS system and experience, including: the history, purpose, operation and supervision of the IRS system, the effect and consequences of IRS (including systematic harms, intergenerational consequences and the impact on human dignity) and the ongoing legacy of the residential schools;*
- g. Support commemoration of former Indian Residential School students and their families in accordance with the Commemoration Policy Directive (Schedule "X" of the Agreement).**

*Indian Residential Schools Settlement Agreement (Canada), Schedule "N": Mandate for the Truth and Reconciliation Commission, para. 1.

Sámi populations and their culture.⁶³ In Burundi, the CVR's mandate refers to creating a shared history for all Burundians.⁶⁴

This public acknowledgment of truth plays an important role in transitional justice. Several commissions record the importance of public acknowledgment of truth in their mandates. For Canada, the TRC's first goal is to "[a]cknowledge Residential School experiences, and consequences."⁶⁵ In Sweden, the commission's mandate describes the creation of a historical record as a means of facilitating collective and individual restoration, promoting reconciliation, and preventing something similar from happening again in the future. Its mandate was informed by the Sámi's proposal that the TRC's work should combat racism by increasing knowledge and greater understanding among the majority population about the Sámi's experiences and the injustices committed against them.⁶⁶

63 Stortinget, Innst. 408 S, Recommendation from the Presidency of the Storting on the Mandate and Composition of the Commission That Will Investigate Norwegianization Policy and Injustice Towards Sami, Kven and Norwegian Finns (Norway), June 12, 2018.

64 Law No. 1/18 of 15 May 2014 (Burundi), Article 6(4)-(5); Law No. 1/022 of 6 November 2018 (Burundi), Article 6(3), (5).

65 Indian Residential Schools Settlement Agreement (Canada), 1(a).

66 Ministry of Culture (Sweden), Committee Directive 2021:103.

As demonstrated above, careful consideration should be given to what truth must be established, including what facts may be unknown or disputed. In the US, while there are extensive pre-existing historical records demonstrating the country's extensive history of slavery and discrimination, and its consequences, this truth is not widely accepted by the general population, including government representatives.⁶⁷ In fact, there are many examples of government representatives who continue to deny the existence of systemic racism or dispute the relevance of these histories. Therefore, the pursuit of truth in relation to racial injustices could clarify and resolve false narratives and misconceptions. In the US, the formal acknowledgment of the truth of racial injustice and its consequences will be among the most important tasks of any commission.

Victims' Rights: Certain mandates emphasize protecting and recognizing the rights of victims, including by affirming their dignity and their right to psychosocial support and formulating proposals for reparations. For example, in Kenya, the TJRC's mandate addressed the affirmation of victims' dignity by providing them with a forum in which to be heard⁶⁸ and through the provision of reparations.⁶⁹

In the context of historic discrimination, restoration of victims' rights can include express instructions to consider measures to protect and preserve a communities' language and culture, as well as the provision of mental and psychological support, among other steps. In Finland, the commission's mandate refers to supporting the ability of the Sámi to maintain and develop their own language and culture, including traditional livelihoods. The TRC is instructed to consider factors "affecting the realisation of the rights of the Sámi people, such as climate change."⁷⁰ The mandate also states that psychosocial support must be part of the implementation process and requires that culturally appropriate mental and psychological support be made available in the Sámi languages.⁷¹

Similar approaches should be adopted in the US. As explained above, commissions should always take a victim-centered approach, and protect, acknowledge, and empower victims and survivors of injustice. They should "establish a relationship with survivors not only as informers, but also as right-holders, partners, and as people whose experiences deserve recognition."⁷² The rights of victims as they participate in the work of a commission and the importance of recommendations for reparations, which are critical in the US, are discussed in more detail below.

Accountability: "Justice" appears expressly in some commissions' mandates, although what is being referred to may be more accurately described as "accountability," as it raises issues of responsibility, due process, amnesties and pardons, restorative justice, and rule of law. Importantly for the US, this includes the responsibility of institutions and responsibility for economic rights violations. Although truth commissions are not judicial bodies (and are rather complementary to criminal justice processes),⁷³ for some commissions, achieving justice included identifying perpetrators and allocating responsibility. The Peruvian CVR's mandate aimed to "creat[e] the necessary conditions for national reconciliation based on justice," and then explicitly called on the CVR to identify, to the extent possible, the presumed responsibili-

67 Ladisch and Roccatello, "The Color of Justice," 6.

68 Truth, Justice, and Reconciliation Act (Kenya), Section 5(h), 6(t)

69 *Ibid.*, Section 6(k)(i), 6(t).

70 Office of the Prime Minister (Finland), "Establishing a Truth and Reconciliation Commission Concerning the Sámi People," Section 3.3.

71 *Ibid.*, 3.5.

72 González and Varney (eds.), "Truth Seeking," 9.

73 *Ibid.*, 10.

ties of those crimes.⁷⁴ In fact, the CVR considered the accurate assignment of responsibility as one of its most important tasks.⁷⁵ This was also the case for the Kenyan TJRC, whose objectives are broadly defined as “promot[ing] peace, justice, national unity, healing, and reconciliation among the people of Kenya.” They further contemplated that the TJRC should determine those responsible for the commission of human rights violations and economic rights and recommend their prosecution.⁷⁶

However, some mandates prohibit the assignment of individual responsibility on the basis that commissions are not judicial bodies and cannot ensure principles of due process. In Guatemala, the CEH’s mandate affirmed that it should not attribute responsibility to any individual.⁷⁷ The CEH itself had trouble determining the scope of this prohibition, but concluded, after consultation with members and jurists, that it would interpret it restrictively. One commissioner expressed concern about naming perpetrators of violence when they could not afford them due process, due in part to the enormous scope of their mandate.⁷⁸ Likewise, the Canadian TRC’s mandate is clear that the TRC is not to act as a public inquiry or conduct formal legal proceedings. It thereby expressly prohibits the use of formal hearings and is instructed not to make any conclusions or recommendations regarding the misconduct of any person, unless already established through legal proceedings, by admission, or by the individual’s public disclosure.⁷⁹ However, some have criticized Canada’s commission for its focus on fact finding, as opposed to the public confrontation of wrongdoers. Those critics argue that if survivors had greater representation within decision-making bodies, there would have been greater focus on allowing public engagement with perpetrators, which some argued was necessary to promote restorative justice.⁸⁰

Similarly, in Burundi, critics expressed concern that the CVR was too heavily focused on forgiveness. These critics contend that the CVR’s “pardon procedure,” which allows victims to pardon perpetrators who request it and express remorse, would sideline the truth-seeking function, and essentially become an amnesty. Moreover, individual pardons overlook that violations are not just violations of the rights of individuals; they are violations of the rule of law. Individual pardons are ultimately not an effective response to systemic or structural crimes. Finally, such pardons place an undue burden on victims, who may feel pressured to grant them to perpetrators who continue to wield power and could enact reprisals.⁸¹ The same criticism has been levied against the South African TRC, with some victims stating that there was too much pressure on victims to forgive perpetrators and not enough focus on their repentance and contrition, nor on fostering systemic change.⁸²

74 Supreme Decree No. 065-2001-PCM (Peru).

75 Truth and Reconciliation Commission of Peru, “Hatun Willakuy, Abbreviated Version of the Final Report of the Truth and Reconciliation Commission” (2014), 24.

76 Truth, Justice, and Reconciliation Act (Kenya), Sections 5(c), 5(d), 6(f). However, the Kenyan TJRC was also mandated to administer a conditional amnesty program for those who made full disclosures regarding relevant facts and satisfied certain criteria, allow perpetrators with a platform for “non-retributive truth telling,” and “provid[e] repentant perpetrators or participants in gross human rights violations with a forum to confess their actions as a way of bringing reconciliation.” *Ibid.*, Sections 5(g), 5(i), Part III.

77 Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused the Guatemalan Population to Suffer (Guatemala), Operation, Clause III.

78 Tomuschat, “Clarification Commission in Guatemala,” 243-44.

79 Indian Residential Schools Settlement Agreement (Canada), 2(b), 2(f), 4.

80 Arsenault, “Resistance to the Canadian Truth and Reconciliation Commission,” 29; Konstantin Petoukhov, University of Manitoba, “An Evaluation of Canada’s Truth and Reconciliation Commission (TRC) Through the Lens of Restorative Justice and the Theory of Recognition” (2011), 90-91.

81 UN General Assembly, Human Rights Council, “Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff,” A/HRC/30/42/Add.1, 10 August 2015, 19-24.

82 Audrey R. Chapman and Hugo van der Merwe, “Assessing the South African Transitional Justice Model,” in Audrey R. Chapman and Hugo van der Merwe (eds.), *Truth and Reconciliation in South Africa, Did the TRC Deliver?* (University of Pennsylvania Press, 2008), 15.

Accordingly, US stakeholders should tread cautiously when considering how any commission on racial injustice should approach the pursuit of criminal accountability and the possible involvement of perpetrators, whether individual or institutional. Typically, a commission will not be able to pursue justice in the sense of individual criminal accountability because it will not have the ability to guarantee principles of due process and because it typically operates in a system of good faith, assuming that victims will tell the truth.⁸³ However, in contexts like the US, where government institutions play a fundamental role in perpetuating injustice (and, in most cases, are or would be involved in the creation and formation of a commission), establishing the facts and responsibility of those institutions may very well be a core objective. For example, in Finland, one of the TRC's aims is for the state to bear responsibility for its actions and treatment of Sámi communities.⁸⁴ However, it may be the case that ensuring sufficient bipartisan political support for a given truth commission may require compromises to be made regarding accountability.

Prevention: Certain commissions are specifically mandated to prepare recommendations for preventing the reoccurrence of harms in the future. For example, the Peruvian CVR was directed to “[r]ecommend institutional, legal, educational and other reforms, as prevention guarantees, so that they are processed and addressed through legislative, political or administrative initiatives.”⁸⁵ Similarly, the Kenyan TJRC was instructed to make recommendations on institutional, administrative, and legislative measures to prevent the future occurrence of human rights violations.⁸⁶

Based on today's calls for reform, it is clear that one of the objectives of any US commission addressing racial injustice should be to identify measures to prevent the recurrence of harms in the future. Examples of recommendations issued by commissions are discussed below.

Reconciliation: “Reconciliation” often appears as one of the key objectives of a truth commission's work, but this concept has been understood by commissions in a variety of ways.⁸⁷ Reconciliation refers to the building or rebuilding of relationships through a variety of means, including different elements of transitional justice to the extent that they can help to build civic trust. It is a long-term process that cannot be achieved by a commission alone. Rather, a commission's work can support this aim by restoring the dignity of victims, assisting complementary reconciliation and healing activities or projects, and identifying potential reforms and changes.⁸⁸ A commission that identifies reconciliation as one of its objectives must, with input from the affected communities,⁸⁹ consider what relationships need to be built or re-built and how this can be achieved. Importantly, the other objectives of truth commissions, such as the pursuit of truth, supporting the dignity of victims, and holding those most responsible to account, can be key components of efforts to achieve reconciliation.

The implementing legislation of the South African TRC repeats a principle memorialized in the interim constitution, which says that “the pursuit of national unity, the well-being of all

83 González and Varney (eds.), “Truth Seeking,” 10-11.

84 Office of the Prime Minister (Finland), “Establishing a Truth and Reconciliation Commission Concerning the Sámi People,” Section 3.2.

85 Supreme Decree No. 065-2001-PCM (Peru), Article 2(d).

86 Truth, Justice, and Reconciliation Act (Kenya), Sections 5(j), 6(l).

87 For more information, see Paul Seils, ICTJ, “The Place of Reconciliation in Transitional Justice: Conceptions and Misconceptions” (June 28, 2017).

88 González and Varney (eds.), “Truth Seeking,” 12.

89 The use of the term “reconciliation” has caused controversy where it is perceived as a means of avoiding acknowledgment or accountability. In Peru, the commission was originally called the “Truth Commission” but renamed “Truth and Reconciliation Commission” at the urging of religious leaders. Some Peruvian government leaders and civilians considered this as an impermissible shift in focus to forgiveness. Rebecca Root, *Transitional Justice in Peru* (Palgrave Macmillan, 2012), 73-74.

South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.”⁹⁰ The TRC considered that the “overarching task” assigned to it by Parliament was the promotion of national unity and reconciliation. Box 3 presents this and other objectives of the commission. While the TRC conceded that the meaning of reconciliation was highly contested, it found that several “essential elements” of reconciliation emerged from public debates. For example, the TRC observed that reconciliation was both a goal and a process. It further recognized that reconciliation takes place at many different levels, including at the personal level through the individual act of coming to terms with the truth, between victims and perpetrators, at the community level, and at the national level. In acknowledging the magnitude of issues (including the “[g]ross socio-economic inequalities” that “are the visible legacy of the systematic, institutionalised denial of access to resources and development opportunities on grounds of colour, race and sex”), the TRC considered that its pursuit of truth should be viewed as a contribution to the much longer-term goal of reconciliation.⁹¹

Box 3: Objectives of the South African TRC

The preamble of the South African TRC’s implementing legislation reflects principles first set out in the post-amble of South Africa’s Interim Constitution of 1993. It describes the context for the TRC as follows:

SINCE the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), provides a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans, irrespective of colour, race, class, belief or sex;

AND SINCE it is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future;

AND SINCE the Constitution states that the pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society;

AND SINCE the Constitution states that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization;

AND SINCE the Constitution states that in order to advance such reconciliation and reconstruction amnesty shall be granted in respect of acts, omissions and offences associated with political objectives committed in the course of the conflicts of the past;

*AND SINCE the Constitution provides that Parliament shall under the Constitution adopt a law which determines a firm cut-off date, which shall be a date after 8 October 1990 and before the cut-off date envisaged in the Constitution, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with... **

*Promotion of National Unity and Reconciliation Act 34 of 1995 (South Africa), Preamble.

90 Promotion of National Unity and Reconciliation Act 34 of 1995 (South Africa), Preamble.

91 Truth and Reconciliation Commission of South Africa, “Truth and Reconciliation Commission of South Africa Report, Vol. 1,” 106-10.

Other mandates also include the objective of reconciliation. The Finnish TRC's mandate explains that it hopes to lay the foundation for reconciliation between the Sámi and the state by forming a common understanding of historical and current discrimination, and supporting the ability of the Sámi to maintain and develop their own language and culture.⁹² Similarly, the Norwegian TRC's mandate explains that it hopes that "by establishing a common understanding of the Norwegianization policy and its consequences," the TRC will "lay the foundation for continued reconciliation between the Sámi, Kvens/Norwegian Finns and the majority population."⁹³ The South Korean TRC's mandate contemplated achieving the objectives of fostering national legitimacy and reconciliation by honoring those who participated in the anti-Japanese movements and investigating crimes and human rights abuses.⁹⁴

For any commission in the US that addresses centuries of state-sponsored racial injustice, reconciliation will require building or rebuilding trust in long-standing state institutions like the police, judiciary, education, and local governments. The foundation for such long-term reconciliation may be set out in a commission's final recommendations, formulated after their investigation is complete and with the benefit of their years of work. Accordingly, a commission that hopes to pursue reconciliation as one of its core objectives may benefit from broad discretion to formulate proposals for reconciliation that it can tailor and adapt to its ultimate findings. As an example, Kenya's TJRC was given the discretion to investigate any other matter it determined necessary to promote and achieve national reconciliation, and to make recommendations to create institutions conducive to a more stable and fair society and legislative measures that should be taken or introduced in order to prevent the violation of human rights.⁹⁵ As to ethnic conflict in particular, the TJRC was directed to make recommendations on the promotion of healing, reconciliation, and co-existence among ethnic communities.⁹⁶

The Commission's Functions

To accomplish the commission's tasks, a mandate will often identify the precise activities that the commission is authorized to undertake to achieve its objectives. This can include the following:

- Receiving and compiling information and research, including from direct written or oral statements, as well as from archives and other documentary sources.
- Adopting measures to protect the well-being of victims and witnesses.
- Holding hearings with the intention of uncovering the causes and enduring consequences of violations.
- Holding public events for fact-finding purposes, educational purposes, or to promote reconciliation.
- Preparing a report of its findings and recommendations for national authorities and the public, sometimes with the express instruction to consider meaningful forms of reparations and redress.

Table 2 summarizes some of the main functions expressly adopted by various commissions around the world. The scope of potential activities of a commission are addressed in further detail below.

92 Office of the Prime Minister (Finland), "Establishing a Truth and Reconciliation Commission Concerning the Sámi People," Section 3.2.

93 Stortinget, Innst. 408 S, Recommendation from the Presidency of the Storting (Norway).

94 Framework Act on Clearing up Past Incidents for Truth and Reconciliation (2005) (South Korea), Article 1.

95 Truth, Justice, and Reconciliation Act (Kenya), Section 6(l).

96 Ibid., Section 6(s).

Table 2: Overview of the Express Functions of Commissions

Jurisdiction	Collect Evidence and Statements		Adopt Measures to Protect Victims and Witnesses		Hold Hearings ^a		Hold Other Public Events		Promote Education and Awareness		Produce a Report		Recommend Redress	
	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Burundi	X	X	X	X	X	X			X	X	X	X	X	X
Canada	X	X	X	X			X		X	X	X	X	X	X
Finland	X								X	X	X			
Guatemala	X	X	X	X					X	X	X	X		
Kenya	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Mauritius	X	X	X	X							X	X	X	X
Norway	X								X	X	X	X		
Peru	X	X	X	X			X	X	X	X	X	X	X	X
South Korea (2005)	X	X	X	X	X	X			X	X	X	X	X	X
South Africa	X	X	X	X	X	X					X	X	X	X
Sweden	X								X	X	X	X	X	X

NOTE: ^aThe reference to hearings here refers to investigatory hearings (as opposed to judicial hearings) where the commission is empowered to hear oral testimony.

The Commissioners

It is paramount that appropriate commissioners are selected and that the commission can function independently and without political interference or influence. In any commission, the commissioners themselves will play the leading role, from exercising discretion regarding the scope of their mandate, determining specific policies and procedures to execute that mandate, formulating methods of investigation, and, at times, participating in the investigations themselves. They are also the public face of the truth commission. Therefore, the criteria set to qualify as a commissioner, selection process for commissioners, and support given to commissioners plays a critical role in the legitimacy of the commission's work, as well as its chances of producing a productive and meaningful outcome.

Any allegation or perception of bias can negatively impact the execution and effectiveness of a commission's work. Therefore, principles and structures to ensure independence must be built into the mandate of a commission. Certain conditions can protect the commission's independence, such as the following:

- A transparent and open process for the selection and appointment of commissioners.
- Legal guarantees that commissioners can only be removed for a just cause.
- Protection of commissioners against threats or retaliation.
- Financial, administrative, and operational autonomy.⁹⁷

For the purposes of this report, we have considered three components of the composition of the commission: the qualifications and features of the commissioners; the selection process; and safeguards put in place to preserve commissioners' integrity. Each of the features discussed below should be considered in the context of current or future US commissions addressing racial injustice and tailored to the precise objectives of those commissions, always with input from Black and other oppressed communities. Given the current political polarization in the US, the integrity of commissions and their commissioners will be critical to their legitimacy and ability to achieve their objectives.

Qualifications and Features: The criteria and selection process for commissioners varies broadly. Table 3 below presents examples of specific considerations and requirements adopted by several commissions. Despite the variance, certain key factors appear consistently across different commissions:

- **Independence and integrity:** Almost all the commissions expressly require that commissioners be independent and of high integrity. Such criteria appear to be the minimum that should be required, although the precise definitions of each as applied to different candidates may be the subject of debate. At the very least, the requirement for independence and integrity should mean that a commissioner is not (or will not be perceived as being) directly involved in the object of the commission's inquiry or with biases in relation to those who are involved, as expressly prohibited by several commission mandates. In Kenya, a critical obstacle to the legitimacy of the TJRC's work was the appointment of Ambassador Bethuel Kiplagat as chairperson. The law expressly prohibited persons from serving on the commission who were in any way involved, implicated, linked, or associated with human rights violations under

97 See generally González and Varney (eds.), "Truth Seeking."

Table 3: The Commissioners

Jurisdiction	Structure	Key Requirements	Selection Authority
Burundi	11 members (original); 13 members (from 2018)	<ul style="list-style-type: none"> Independent, neutral, and inclusive, and representing a broad range of technical competencies. All of Burundian nationality. All 35 years old or over. At least four female members and one member of the Batwa community. This requirement was removed in the 2018 law. Probity, integrity, technical competence, and capacity to transcend divisions. Cannot have committed serious violations of human rights and international humanitarian law. 	Upon reviewing applications, the ad hoc committee of the National Assembly and Senate were to prepare a shortlist of 33 candidates, after which the National Assembly would determine the 11 candidates (amended to 13 in 2018) based on a simple majority. These candidates were then transmitted to the president for appointment.
Canada	3 members (including 1 chair)	<ul style="list-style-type: none"> All persons of recognized integrity, stature, and respect. Consideration given to having at least one of the members being an indigenous person. 	Appointed out of a pool of candidates nominated by former students, indigenous organizations, churches, and government. The Assembly of First Nations was to be consulted in making the final decision as to the appointment of the commissioners.
Finland	5 members	<ul style="list-style-type: none"> Independent. Must include those who have special expertise concerning the conditions, language, and culture of the Sámi people. Representation of different Sámi language groups and gender balance must be considered. 	Two elected by the Finnish Government, two by the Sámi Parliament, and one by the Skolt Village Assembly.
Guatemala	3 members (including 1 chair)	<ul style="list-style-type: none"> One commissioner that is Guatemalan and of irremovable conduct. One commissioner that is an academic from a list proposed by presidents of Guatemala's universities. 	Chair appointed by the UN Secretary-General. Two appointed by the chair, with agreement of the Parties.

(continued)

Table 3 (continued)

Jurisdiction	Structure	Key Requirements	Selection Authority
Kenya	9 members (including 1 chair)	<ul style="list-style-type: none"> • Six Kenyan citizens, three non-Kenyan citizens. • Regard given to gender equality and regional balance. • As much as practicable, the commission was to be balanced, representative of Kenyan society, perceived to be impartial in its collectivity, and contain diverse professional and religious backgrounds. • Four commissioners should have at least 15 years of experience in human rights law. • Five commissioners should have other expertise such as investigations, anthropology, social relations, conflict management, religion, or gender issues. • No commissioner was permitted to have been involved, implicated, linked, or associated with human rights violations of any kind or in any matter which is to be investigated under the act. • All commissioners were required to be of good character and integrity, impartial, and to generally enjoy the confidence of the Kenyan people. 	<p>Six Kenyan commissioners selected through a “national consultative process” and three non-Kenyan commissioners through the Panel of Eminent African Personalities.</p> <p>Selection of the Kenyan commissioners began with formation of a selection panel, composed of nine individuals nominated by various religious and professional organizations. The selection panel solicited nominations, conducted interviews, and sent a shortlist to the National Assembly for consideration.</p> <p>The National Assembly then debated the suitability of the candidates and submitted a shortlist of nine candidates to the president along with the three names nominated by the Panel of Eminent African Personalities. The president was to select the chair.</p>
Mauritius	5 members (including 1 chair and 1 vice chair)	<ul style="list-style-type: none"> • Wide experience in the field of history, anthropology, culture, economics, or law. • Shall perform their functions independently of the control or authority of any person or body and in an impartial manner. 	Appointed by the President of Mauritius.

(continued)

Table 3 (continued)

Jurisdiction	Structure	Key Requirements	Selection Authority
Norway	12 members (including 1 chair)	<ul style="list-style-type: none"> • Experts in different fields relevant to the commission's work, with specific knowledge of Sámi or Kven/Norwegian-Finnish conditions, languages, or culture. • Selection takes into account geographical representation and meets requirements for gender representation under Norwegian law. 	Appointed by the Norwegian Parliament based on the recommendations of the president, prepared in consultation with the Sámi Parliament and Kven/Norwegian-Finnish organizations.
Peru	7 members (original); 12 members (2001)	<ul style="list-style-type: none"> • All of Peruvian nationality. • Persons of ethical trajectory, prestige, and legitimacy, known to defend democracy and constitutional institutions. 	Appointed by the president, with the approval of the Council of Ministers.
South Africa	17 members (including 1 chair and 1 vice chair)	<ul style="list-style-type: none"> • Members were to be fit and proper persons who were impartial and did not have a high political profile. • No more than two persons who were not South African citizens. 	Appointed by the president in consultation with the cabinet. In practice, President Mandela created a selection committee that sought nominations from the public.
South Korea (2005)	15 members; 4 appointed as standing commissioners	<ul style="list-style-type: none"> • All of Korean nationality. • Background either as a full-time professor, judge or attorney, public official, or researcher in history in the compilation of historical documents. 	Eight appointed by the National Assembly, four by the Korean President, and three by the Chief Justice of the Supreme Court.

investigation by the TJRC. Civil society raised immediate concerns regarding Ambassador Kiplagat's appointment due to alleged connections with multiple violations.⁹⁸

- **Eminence:** Certain commissions refer to appointing commissioners of eminence or respect. However, while such requirements may bolster the respect given to a commission's work, they should be balanced against the risk of appearing elitist. In Peru, the commissioners were criticized for "reflecting an elite sector of Peru least affected by the violence." None were identified as indigenous, none from rural regions, and they possessed minimal fluency in the dominant language of the affected indigenous peoples.⁹⁹
- **Victim and regional representation:** Commissions typically require that a certain number of commissioners represent victim communities or the regions most impacted by the events under investigation. In Finland, representation from the different Sámi language groups was to be taken into account.¹⁰⁰ In Kenya, achieving regional balance was expressly referenced in the implementing legislation.¹⁰¹ Moreover, appointing commissioners that reflect a diverse array of perspectives and backgrounds ensures that those views are incorporated into the work of the commission, while also combatting the appearance of bias. Steps should be taken, however, to make sure that representation amounts to meaningful participation and is not merely symbolic.
- **Gender:** Several commissions mandate the appointment of a certain number of women, or that the selection of commissioners be appointed with gender balance in mind. This was the case in both Finland¹⁰² and Kenya.¹⁰³ This requirement appears frequently (although not exclusively so) for commissions whose mandates require investigating crimes committed against women, including sexual violence.
- **Expertise:** A number of skills and areas of expertise can be relevant to the execution of a commission's mandate, including historical knowledge, legal expertise, religious knowledge, language skills, technical or forensic expertise, and other competencies. The necessary expertise will depend on the object of the commission's inquiry and the needs of the affected communities. For example, in the case of Kenya, given the breadth of violations encapsulated by the scope of the TJRC's work, the mandate required that four commissioners have 15 years' experience in human rights law and five have knowledge and experience in forensic audit, investigations, psycho-sociology, anthropology and social relations, conflict management, religion or gender issues.¹⁰⁴ It is important to remember that a commission will also have staff that can cover specific areas of expertise, so the selection of commissioners should balance specific areas of knowledge with overall leadership and interpersonal qualities. Leading a truth-seeking process is challenging and will face criticism; it is therefore very important to have commissioners who can guide the commission through these obstacles.
- **Inclusion of international representatives:** Certain commissions contemplate the participation of international representatives among the commissioners. Where there are concerns

98 Ronald C. Slye, *The Kenyan TJRC: An Outsider's View from the Inside* (Cambridge University Press, 2018); Christopher Gitari Ndungú, ICTJ, "Lessons to Be Learned: An Analysis of the Final Report of Kenya's Truth, Justice and Reconciliation Commission" (May 19, 2014).

99 Jaymie Heilman, "Truth and Reconciliation Commission of Peru," *Oxford Research Encyclopedia of Latin American History*, June 25, 2018.

100 Office of the Prime Minister (Finland), "Establishing a Truth and Reconciliation Commission Concerning the Sámi People," Section 3.6.

101 Truth, Justice and Reconciliation Act (Kenya), Section 10(4).

102 Office of the Prime Minister (Finland), "Establishing a Truth and Reconciliation Commission Concerning the Sámi People," Section 3.6.

103 Truth, Justice and Reconciliation Act (Kenya), Section 10(4).

104 *Ibid.*, Section 10(5).

that political, regional, or ethnic influences may dominate the work of a commission, international representatives could lend credibility to a commission's work. In Burundi, the lack of international representatives among its commissioners has caused concern. While the 2014 implementing law envisioned an international advisory council, no such council has ever been formed and, in fact, international bodies were exiled from Burundi by the government.¹⁰⁵ The relevant provisions were ultimately removed in the 2018 law and replaced with a vague reference to the use of international experts.¹⁰⁶

- **Size:** The appropriate size for any commission may depend on the scope of its work, the variety of stakeholder perspectives that may be taken into account, and the type of expertise that may be necessary to accomplish its mandate. However, the desire to include as many voices on the commission as possible should be balanced against the need for a manageable group capable of contributing to the commission's objectives. In Peru, the large number of commissioners (12) and staff reportedly led to difficulties working together and reaching a coherent and unified view.¹⁰⁷ Between three to seven commissioners is generally a manageable number.

Selection Procedure: The process for selecting commissioners should be transparent and include a role for civil society and affected communities to provide input into the process. In practice, the appointment process has varied widely. Generally, commissioners can be appointed by one or more of the following: a government authority, an ad hoc or special committee, international organizations, and civil society.

Recent commissions focused on historic discrimination have given affected communities a direct role in the appointment of commissioners. For example, in Finland, of the five commissioners, two were to be elected by government proposal, two by the Sámi Parliament, and one by the Skolt Village Assembly.¹⁰⁸ The Canadian TRC was comprised of three commissioners appointed from a pool of candidates nominated by former students, indigenous organizations, churches, and government officials. Moreover, the Assembly of First Nations was to be consulted in the final decision.¹⁰⁹ For the South African TRC, although the implementing legislation itself did not contemplate the involvement of civil society in the selection process (instead stating that the president would appoint the commissioners in consultation with his cabinet¹¹⁰), in practice President Mandela created a selection committee with representatives from major political parties and civil society, which accepted hundreds of nominations from the public. The committee then reviewed the nominations and sent a short list to President Mandela, from which he appointed the commissioners.¹¹¹

Similar approaches will be important in the US, where civil society will expect to have a voice at some stage of the commissioner selection process (whether in the formulation of criteria, through nominations, or both). While an appointment procedure dictated by government authorities may appear to be the path of least resistance, it would risk delegitimizing a commission's work. This is especially true given the political climate in the US. As an example, in South

105 Law No. 1/18 of 15 May 2014 (Burundi), Articles 24-28; Human Rights Watch, "Commission of Inquiry on Burundi Vital in Prompting Meaningful Human Rights Progress: Joint Letter to the Permanent Representatives of Member and Observer States of the UN Human Rights Council" (August 21, 2020).

106 Law No. 1/022 of 6 November 2018 (Burundi), Article 25.

107 Eduardo Gonzalez Cueva, "The Peruvian Truth and Reconciliation Commission and the Challenge of Impunity," in Naomi Roht-Arriaza (ed.), *Transitional Justice in the Twenty-First Century* (Cambridge University Press, 2006), 79.

108 Office of the Prime Minister (Finland), "Establishing a Truth and Reconciliation Commission Concerning the Sámi People," Section 3.6.

109 Canada, Indian Residential Schools Settlement Agreement, 5.

110 Promotion of National Unity and Reconciliation Act 34 of 1995 (South Africa), Section 7(2)(a).

111 Truth and Reconciliation Commission of South Africa, "Truth and Reconciliation Commission of South Africa Report, Vol. 1," 53.

Korea, the work of the TRC was cut short when a change in political power resulted in the new president's replacement of the chairperson with someone who critics allege did not support the TRC's mission and sought to terminate its operations.¹¹²

Measures to Safeguard Commissioners' Integrity: Mandates frequently contemplate safeguards to protect appointed commissioners from influence or bias. In Burundi, commissioners were considered full time employees, barred from holding other office in public or private life, and were required to remove themselves from matters that might present a conflict of interest.¹¹³ In Kenya, commissioners were not allowed to actively participate in any political party or other organization "propagating partisan views with respect to the work of the Commission."¹¹⁴

Relatedly, ensuring the integrity of commissioners requires that they are able to treat their role as a full-time position and are granted an appropriate salary. This is sensible given the scope of the work involved and the dedication and attention required of a commission to accomplish its overall objectives. Moreover, requiring that the commissioners work full time and remove themselves from other employment avoids the possibility and appearance of bias or influence.

Commissions often include provisions to protect commissioners from threats or acts of reprisal arising from their work. For example, in Mauritius, commissioners could not be held liable for prosecution, action, or suit in respect of any matter or thing done by her or him as a member.¹¹⁵ In Burundi, commissioners are immune from prosecution related to the exercise of their positions, although this immunity is waivable by a two-thirds vote by other commissioners.¹¹⁶

Mandates also generally include provisions for the removal of commissioners. The commissioners of the Mauritius TJC could be removed for certain specified grounds, including incompetence or misbehavior.¹¹⁷ Kenya's TJRC Act included removal provisions, which allowed the removal of commissioners for, inter alia, misbehavior or misconduct, by determination of a tribunal composed under the act.¹¹⁸

Operations

Commissions are given enormous responsibilities and therefore require the staff and resources necessary to accomplish those tasks. For a commission to operate successfully, it must have a well-organized structure, properly trained staff, adequate facilities, and sufficient financial resources. These operational aspects are often referenced broadly in the mandate but typically developed and agreed upon by commissioners and core staff during a preparatory phase of the commission's work. In this section, we briefly address common features and considerations governing the operational structure of a commission, staff requirements, and financing considerations.

In the US, given the wide range of potential scope and objectives, any given commission will need to match the specifics of its operations (such as its thematic, technical, and geographic structure) with the nature of its mandate. And, since the focus will be on racial injustice, the

112 See Paul Hanley, "Transitional Justice in South Korea: One Country's Restless Search for Truth and Reconciliation," *University of Pennsylvania East Asia Law Review* 9 (2014), 161; Kim Dong-Choon, "Korea's Truth and Reconciliation Commission: An Overview and Assessment," *Buffalo Human Rights Law Review* 19 (2011), 109.

113 Law No. 1/18 of 15 May 2014 (Burundi), Articles 17, 46; Law No. 1/022 of 6 November 2018 (Burundi), Articles 18, 43.

114 Truth, Justice and Reconciliation Act (Kenya), Section 10(7).

115 Truth and Justice Commission Act (Mauritius), Article 14(1).

116 Law No. 1/18 of 15 May 2014 (Burundi), Article 18; Law No. 1/022 of 6 November 2018 (Burundi), Article 19.

117 Truth and Justice Commission Act (Mauritius), Article 6(2).

118 Truth, Justice and Reconciliation Act (Kenya), Section 17.

staff must reflect a cross-section of the relevant oppressed communities to ensure community participation, buy-in, and legitimacy. Moreover, while the effective operations of any commission in the US will depend on the provision of substantial funding, especially given the potentially ambitious mandate, its legitimacy in the current political climate will especially depend in part on the transparency, autonomy, and integrity of its financial arrangements.

Operational Structure and Staff

Most mandates do not specify the precise composition of the operational structure, staff, or facilities. Rather, they provide an overview as to the general structure of the commission's operations, with the understanding that the commission will use its discretion to determine the specifics of its operations once appointed. For example, the Guatemalan CEH's mandate states that the commission had the discretion to determine what support staff it deemed necessary to carry out its tasks.¹¹⁹ Likewise, the Kenyan TJRC was permitted to appoint officers and other staff as it deemed necessary for the proper performance of its functions, with the requirement that appointments would be made with regard to the principle of gender quality.¹²⁰

Typically, the day-to-day operations of a commission are overseen by a secretariat or main bureau, whose staff carry out the functions of the commission, including collecting information, conducting investigations, organizing relevant events, and preparing the final report. These secretariats or bureaus are often run by an executive or president who oversees the commission's operations. With respect to facilities, apart from their main offices, several commissions established regional offices located in the communities that were most impacted by relevant events. In Guatemala, these regional offices were essential to the commission's work, since the areas most affected by the conflict were extremely remote and difficult to access.¹²¹

In many cases, the functions of the commission have been organized across different departments, committees, or units based on themes or technical expertise. For the South African TRC, the implementing legislation directs the creation of certain committees and details their functions (namely, the Human Rights Violations Committee, the Reparation and Rehabilitation Committee, and the Amnesty Committee), and further describes the establishment of the investigating unit.¹²² In Peru, the CVR consisted of multiple subcommittees, including el Núcleo del Informe Final (NIF), a subcommittee tasked with writing the CVR's report, and el Grupo de Actoría Pública (GAP), which was tasked with communicating with the media, promoting the work of the CVR, and fostering connections with the public and political groups.¹²³ The CVR employed members of its 500-person staff in various units, including the Forensic-Anthropological Investigations Unit, the Mental Health Team, the Legal Team, the Public Hearings unit, and others.¹²⁴ Similarly, in South Korea, commission staff were divided into eight units, including the Bureau of Administration Management, the Bureau of Investigation on Massacres, the Bureau of National Independence, and the Policy and Public Relations Team.¹²⁵ Likewise, in Kenya, the TJRC ultimately formed seven standing committees, eight departments

119 Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused the Guatemalan Population to Suffer (Guatemala).

120 Truth, Justice and Reconciliation Act (Kenya), Sections 30(1), 30(2).

121 Marlies Stappers, "Guatemalan Experience in Dealing with the Past, Commission for Historical Clarification," December 17, 2008.

122 Promotion of National Unity and Reconciliation Act 34 of 1995 (South Africa), Chapters 3-5, Section 28.

123 Truth and Reconciliation Commission of Peru, "Work Areas," www.cverdad.org.pe/ingles/lacomision/nlabor/index.php.

124 Cueva, "The Peruvian Truth and Reconciliation Commission and the Challenge of Impunity," 70; Heilman, "Truth and Reconciliation Commission of Peru"; Truth and Reconciliation Commission of Peru, "Hatun Willakuy," 361-62.

125 Truth and Reconciliation Commission (South Korea), "Truth and Reconciliation: Activities of the Past Three Years" (March 2009), 18.

to run technical operations, and a secretariat.¹²⁶ Given the variety of functions a commission's work requires (from statement takers, to regional liaisons, to historians, to psychologists, to lawyers, to public relations specialists, and many more), as with the commissioners themselves, hiring appropriate staff who have the right expertise is critical to the successful execution of the commission's mandate.

In addition, commissions are typically staffed with regard to maintaining a sufficient balance of gender, ethnic, and religious diversity, and, in particular, to reflect the make-up of the potential victims and affected communities. These considerations are critical for at least two reasons: first, to communicate with victim communities and to facilitate their participation in the commission process, and second, to bolster legitimacy. For example, in the case of Canada, staff and regional liaisons were hired by the Executive Director, in consultation with the Indian Residential School Survivor Committee (IRSSC), which consisted of 10 representatives, each from a community organization or IRS survivors' group. The IRSSC was selected by the Canadian government in consultation with numerous stakeholders. It served as an advisory committee to the commissioners and the secretariat, including on the selection of staff and regional liaisons. Likewise, the regional liaisons became an important link between local communities and the central secretariat and commissioners. The regional liaisons acted as "knowledge conduits" between local communities and the commissioners, better enabling the latter to understand what was happening on the ground.¹²⁷ In Peru, the CVR employed many Peruvians from Ayacucho, the area most impacted by the violence subject to the CVR's investigation.¹²⁸ The makeup of the CVR was criticized as being non-reflective of the victim population, and so the presence of representatives of victim communities on staff counteracted some of this negative reception.

For prior commissions, staff or volunteers have also been seconded from government agencies and local organizations. In Kenya, staff or other support came from government agencies and outside organizations.¹²⁹ The Peruvian CVR received support from numerous outside organizations, including for logistical support, assistance for victims, the broadcast of public hearings, and other volunteer programs.¹³⁰ In certain cases, foreign staff members can play a role where local staff, including government employees, can be perceived as biased. In Guatemala, the CEH had roughly equal numbers of Guatemalan and foreign staff members, which commentators have suggested allowed the CEH to be viewed as more objective. Together with UN support, this may have allowed its work to proceed further than it otherwise would have.¹³¹ Staff and volunteers from all these sources can provide valuable perspectives and fill in gaps where a commission is not granted sufficient resources.

For any commission in the US on racial injustice, in addition to ensuring appropriate expertise and training, it will be critical for staff to reflect a cross-section of the communities affected by the object of the commission's work. This will encourage community participation, buy-in, and bolster the commission's sense of legitimacy across different members of the impacted communities. In the event such a commission seeks to utilize staff from government authorities or local

126 Truth, Justice and Reconciliation Commission (Kenya), "Report of the Truth, Justice and Reconciliation Commission, Vol. 1" (2013), 27-29.

127 Indian Residential Schools Settlement Agreement (Canada), 6-7.

128 Lisa J. Laplante and Kimberly Theidon, "Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru," *Human Rights Quarterly*, 29 (2007), 239.

129 Truth, Justice and Reconciliation Commission (Kenya), "Report of the Truth, Justice and Reconciliation Commission, Vol. 1," 30; Lydiah Kemunto Bosire and Gabrielle Lynch, "Kenya's Search for Truth and Justice: The Role of Civil Society," *International Journal of Transitional Justice* 8 (2014), 273.

130 Truth and Reconciliation Commission of Peru, "Hatun Willakuy," 359-62; Elizabeth A. Cole, ICTJ, "No Legacy for Transition Justice Efforts Without Education" (March 20, 2017).

131 Greg Grandin, "The Instruction of Great Catastrophe: Truth Commissions, National History, and State Formation in Argentina, Chile, and Guatemala," *American Historical Review* 110 (2005), 58-59.

and/or international organizations, it should do so with a view towards ensuring no one source is a dominant presence on its staff, such that there could be an appearance of bias or external influence. Like its commissioners, staff should be held to high moral standards, neutrality, and independence.

Funding

It is incontrovertible that a commission will require substantial funds to accomplish its tasks and that its funding should enable it to perform its functions to the highest standards. It naturally follows that inadequate funding will harm the operations of a commission. For the duration of its work, the Kenyan TJRC suffered from shortfalls in funding that hampered the efficient and effective progress of its work. For example, the TJRC was unable to hire staff during its first year and its support staff was minimal, consisting of only 17 individuals seconded from the Ministry of Justice.¹³² During the course of its operations, budgetary gaps were reportedly filled by the commissioners themselves, who loaned money to the TJRC. At times, to ensure there was sufficient staff, the government provided its own employees, which undermined the TJRC's financial and operational independence.¹³³

However, there is no set figure or formula for determining the appropriate funds for a commission. Where financial information is publicly available, the overall budgets of past commissions varied dramatically across jurisdictions. As indicators, the Canadian TRC received over CAD 72 million from the Canadian government.¹³⁴ The South Korean TRC reportedly had an annual budget from the government of between USD 15-20 million during its operations from 2005 to 2010.¹³⁵

A commission's mandate should specify the sources of funding that are available to a commission, including whether all the funds will be provided by the government or whether the commission will have the authority to conduct its own fundraising, thereby setting the parameters for what commissioners can plan for during the preparatory phases of their work. Funding sources can include the government, local organizations, foreign governments, and international donors. The South African TRC was funded by both the national government and donations from various foreign ones.¹³⁶ The Guatemalan CEH was funded primarily by the UN and international donors, with its funds managed by the UN Office for Projects, and with an overall budget of USD 9.8 million for approximately 18 months of operations.¹³⁷ More than 50 percent of the Peruvian CVR's budget was recovered from foreign bank accounts held by corrupt officials.¹³⁸

Regardless of the source of a commission's funding, transparency is of utmost importance. The sources of its funds, the commission's budget, and its ultimate expenditures should be readily accessible. Among the reviewed commissions, detailed financial information was often unavailable.

Alongside transparency, commissions should have financial autonomy, such that the government cannot be perceived to influence or impede their work through control over its budget and finances. For example, the Canadian TRC was given control to determine how to allocate

132 Truth, Justice and Reconciliation Commission (Kenya), "Report of the Truth, Justice and Reconciliation Commission, Vol. 1," 30.

133 Naughton, "Kenya: Case Study," 62-63.

134 Government of Canada, "Truth and Reconciliation Commission of Canada," www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525.

135 United States Institute of Peace, "Truth Commission: South Korea 2005" (April 18, 2012).

136 Truth and Reconciliation Commission of South Africa, "Truth and Reconciliation Commission of South Africa Report, Vol. 1," 299-300, Chapter 11, Appendices 1-3.

137 Félix Reátegui, ICTJ, "Guatemala: Case Study" in ICTJ and Kofi Annan Foundation, "Challenging the Conventional."

138 González and Varney (eds.), "Truth Seeking," 32.

its budget.¹³⁹ Otherwise, government control over the finances of a commission can undermine its independence and legitimacy. In Kenya, one of the TJRC's commissioners explained that a significant challenge at the outset of the commission's work was that the Ministry of Justice exercised complete control over its finances and that the commission required the ministry's permission to spend any money allocated by Parliament.¹⁴⁰ In South Korea, during the operations of the 2005 TRC, the newly-elected president who opposed the commission's work cut its budget significantly, thus undermining its ability to conclude its mandate.¹⁴¹

Fulfilling the Mandate

Once the mandate and structure of a commission are in place, it must, of course, perform its functions. Given the nature of their work, almost all the commissions under review here approached their work in phases, divided broadly between a preparatory phase, a fact-finding phase, a hearing phase, and a report drafting phase. Different factors, such as financing and the time granted to a commission to complete its work, have an impact on when phases begin and if they should occur in parallel. For example, in Kenya the fact-finding phase was divided between statement-taking and investigations,¹⁴² while in Burundi, there were five phases: preparatory, testimony, inquiry and investigations, hearing, and reparations and reconciliation.¹⁴³ In contrast, the Mauritian TJC was only given two years to produce a report with the option to extend that time by six months, and therefore needed to work quickly and proceeded on multiple fronts in parallel.¹⁴⁴ Below, we provide an overview of the core methodology employed by the commissions in fulfilling their mandates, focusing in particular on their methods of information collection, public outreach, and their preparation of a final report. We also analyze how these methodologies may be applicable in the US context.

In the US, commissions would be wise to anticipate some resistance from government institutions in granting access to official records. Still, given the high volume of such records relevant to the treatment of Black and oppressed communities, they should do as much as possible to leverage the work already done by public and private institutions. This is particularly true since a main challenge in the US is acknowledgment of the past rather than simple knowledge of it. Possible sources to draw upon include existing scholarship, documentation, and mapping initiatives on issues such as slavery and the contemporary experiences of Black communities, as well as exhumations of African burial sites and mass graves, taking into account community wishes. Information collection efforts through testimony and hearings will need to balance the value of a public process, as well as the potentially massive level of community participation, with considerations about confidentiality, privacy, safety, mental health, and legal protection for those involved.

As with all such efforts, the success of truth commissions in the US toward achieving their objectives will depend on public outreach, which serves to educate and establish a two-way communicative relationship with affected communities and all stakeholders. Outreach requires adequate time and funding, and given the country's polarized media landscape, will require the

139 Indian Residential Schools Settlement Agreement (Canada), 14.

140 Slye, *The Kenyan TJRC*, 140.

141 Hanley, "Transitional Justice in South Korea," 161.

142 Truth, Justice and Reconciliation Commission (Kenya), "Report of the Truth, Justice and Reconciliation Commission, Vol. 1," 80.

143 Law No. 1/18 of 15 May 2014, Articles 51-64; Burundi, Law No. 1/022 of 6 November 2018 (Burundi), Articles 48-61.

144 Croucher, Houssart, and Michel, "The Mauritian Truth and Justice Commission," 336.

difficult task of developing an inclusive and unbiased media strategy.¹⁴⁵ A final report issued by a commission is important to the goal of establishing a historical record. A transparent review process for this report should constitute part of the broader public outreach, as should steps to ensure its accessibility and minimize digital and other types of barriers to access. In addition, in light of the potentially massive amount of testimony that will likely not be included in the report, it should be complemented by additional methods for preserving such input. Finally, given that a truth commission cannot ensure victims' rights, accountability, reconciliation, or prevention and transformation on its own, it can provide guidance to other actors and institutions in the form of recommendations. In the US, given the historical and systemic nature of racial injustice, it will be crucial for those recommendations to address material and symbolic reparations and reform of the law enforcement and criminal justice systems. It will likewise be important that civil society is engaged in monitoring and advocating for the implementation of those recommendations.

Information Collection

All the commissions reviewed in this report sought to establish truth. Therefore, all of these commissions were tasked with the enormous project of collecting records and evidence of relevant events, including from victims, witnesses, and, in some cases, perpetrators. This information was generally collected in three forms: documents, testimony, and hearings.

Documents

The collection of documentation plays a valuable role in the process of truth seeking as a vehicle for preserving both objective information and subjective perceptions of events. In the course of their work, the commissions collected and relied upon two broad categories of documentary evidence: official records and unofficial records, including scholarship and physical evidence.

Official Records. As one of the objects of a commission is to investigate government wrongdoing, official government records can be an essential source of information. Therefore, empowering a commission with the authority to obtain government records is both critical to ensuring it can accomplish its truth-seeking objective and to bolstering the legitimacy of its work. For example, the Mauritian TJC had broad powers to make visits, take copies of documents, summon witnesses on oath, gather information in foreign countries with the prime minister's approval, and seek disclosure of confidential documents.¹⁴⁶ Its mandate states directly that it may "summon any witness and examine him on oath and call for the production of any document or article."¹⁴⁷

However, any such powers given to the commission must be meaningful. The Settlement Agreement that formed the Canadian TRC required the federal government to turn over documents that may have been relevant to the activities of the TRC to the secretariat.¹⁴⁸ In particular, the government possessed archives documenting important information on the IRS, including files detailing sexual abuse that occurred in the schools and information about alleged perpetrators. However, the government resisted granting access to their archives, claiming that they were protected by privacy laws or that documents did not exist. Accordingly, the TRC was forced to spend significant time in court seeking production of the relevant documents, and its efforts

145 Clara Ramírez-Barat, ICTJ, "Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice" (January 2011).

146 Croucher, Houssart, and Michel, "The Mauritian Truth and Justice Commission," 336.

147 Truth and Justice Commission Act (Mauritius), Article 5(2)(d).

148 Truth and Reconciliation Commission of Canada, "Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada" (2015), 27.

were only partially successful.¹⁴⁹ This created skepticism about the Canadian government's willingness to engage meaningfully in a truth-seeking process.

In certain instances, a commission's work required seeking records from foreign governments. The Guatemalan CEH received declassified documents from the US government, although some have suggested that the documents that were furnished amount to only a fraction of the records in the US government's possession. However, the evidence the CEH was able to gather proved valuable in corroborating the conclusions in its final report.¹⁵⁰

Similarly, in the US, there could be a large volume of official records that a given commission may need to be able to collect, sort, and analyze. In undertaking this exercise, US stakeholders should leverage the work already done by public and private institutions to preserve historical records that could be useful to a commission's work. For example, the US National Archives and the Library of Congress have collections dedicated to slavery-related records. Several universities have also created databases of records.¹⁵¹ More contemporary records regarding recent violent events may need to be requested from government authorities. Ultimately, to ensure that commissions in the US are able to accomplish the objective to seek truth and to preserve the legitimacy of their work, they must be granted sufficient power by public authorities to collect documents from the government. This may include the ability to compel the production of evidence and testimony, conduct forensic examinations, and oblige political parties and government officials to cooperate.¹⁵² Without such cooperation, a commission might be required to go through legal channels to obtain necessary information (such as Freedom of Information Act requests), which could take considerable time and resources.

Unofficial Records. In addition to official records, commissions have used a wealth of alternative documentary sources to supplement their investigations. Scholarly works have provided valuable information for commissions addressing historical events. In light of the long historical period it was mandated to address, the Mauritian TJC relied upon scholarly historical works published from the nineteenth century onwards, including archival research in France and Britain, as one of its key sources of information.¹⁵³ Scholarly works may likewise be an important source to commissions in the US given the extensive existing scholarship addressing issues such as slavery and the contemporary experiences of Black communities.

Commissions have also benefited from information collected by other organizations and initiatives. In Guatemala, the Catholic church used its extensive rural networks to support the Project for the Recovery of Historical Memory in Guatemala, which set up local offices in parishes across the country and, with the support of human rights organizations, compiled 5,465 testimonies and prepared a final report that it shared with CEH.¹⁵⁴ As noted above, similar documentation projects have already been initiated in connection with slavery in the US. Several organizations have also mobilized mapping initiatives that record historical harms against Black communities. For example, the Equal Justice Initiative has developed the Community Historical Marker Project to map and install narrative historical markers at the sites of racial

149 Arsenault, "Resistance to the Canadian Truth and Reconciliation Commission," 18-25.

150 Tomuschat, "Clarification Commission in Guatemala," 252.

151 Georgetown University's Slavery Archive (<https://slaveryarchive.georgetown.edu/>) and Duke University's American slavery documents collection (<https://archives.lib.duke.edu/catalog/americanslaverydocs>).

152 González and Varney (eds.), "Truth Seeking," 25-26.

153 Croucher, Houssart, and Michel, "The Mauritian Truth and Justice Commission," 337.

154 Richard Wilson, "Violent Truths: The Politics of Memory in Guatemala," *Accord 2* (November 1997), 21-22.

terror lynchings.¹⁵⁵ It will be important for commissions in the US to build upon the efforts of these existing community-led initiatives.

Physical and forensic evidence (to the extent available) may also prove valuable in the process of truth seeking by debunking and/or reinforcing statements made in documents and testimonies. In Peru, the CVR registered burial sites and conducted exhumations to identify victims and record the circumstances of their deaths.¹⁵⁶ While exhumations also have been conducted in Burundi, some criticize the shift in focus to mass graves from the 1972 genocide as a way for the current government to keep the spotlight off of crimes that had taken place in the most recent years.¹⁵⁷ Exhumation of African burial sites and mass graves may likewise form a part of the investigations conducted by US commissions. The nature and target of these exhumations will depend on the objectives of a given commission. However, it is critical that any exhumation effort considers community wishes. For example, the 1991 discovery of a burial site in New York City with the skeletal remains of more than 15,000 enslaved and free Africans provided insight into the history of African Americans in New York. The remains of 419 persons were ultimately exhumed and analyzed, and importantly, the research agenda was negotiated through extensive civic engagement and accompanied by memorialization activities.¹⁵⁸ In contrast, exhumations were conducted in Tulsa, Oklahoma in 2021 in an effort to identify victims of the 1921 Tulsa Race Massacre. However, these exhumations (and subsequent reinternments) were carried out with limited civic engagement and, as a result, led to protests by the descendants of victims.¹⁵⁹

Testimony

Written and oral testimonies are one of the most important avenues through which commissions collect evidence. Some of these commissions have collected thousands of individual statements from victims, witness, and perpetrators. Testimonies were obtained in several ways, including by asking individuals to write their own statements, recording audio or videos of individuals giving statements, and by deploying notetakers who wrote down or transcribed oral statements. For example:

- The South African TRC collected 21,000 statements from “deponents” who described gross violations of human rights that they had experienced or were committed against someone close to them. Statements were gathered from all nine provinces by the TRC’s four regional offices.¹⁶⁰
- The Canadian TRC collected 6,750 individual statements from IRS survivors, and more than 180 individuals and organizations came forward with statements of their own commitments to healing.¹⁶¹ The TRC utilized a variety of formats to gather these testimonies, including audio and video statements.¹⁶² The testimonies were placed in a ceremonial box to be housed

155 Equal Justice Initiative, “Community Historical Marker Project,” <https://eji.org/projects/community-historical-marker-project/>.

156 Truth and Reconciliation Commission of Peru, “Balance TRC,” www.cverdad.org.pe/ingles/lacomision/balance; Truth and Reconciliation Commission of Peru, “Hatun Willakuy,” 353.

157 Rugiririza, “Burundi: The Commission of Divided Truths;” Ephrem Rugiririza, “Burundi Truth Commission Exhumations Caught Up in Elections,” *Justice Info*, November 1, 2018.

158 US National Park Service, “African Burial Ground: History and Culture,” www.nps.gov/afbg/learn/historyculture/index.htm.

159 Randy Krehbiel, “Exhumed Remains Reburied at Tulsa Cemetery Amid Protests from Greenwood Descendants,” *The Oklahoman*, August 2, 2021; City of Tulsa, “1921 Graves Investigation,” www.cityoftulsa.org/1921graves.

160 Truth and Reconciliation Commission of South Africa, “Truth and Reconciliation Commission of South Africa Report, Vol. 1,” 165-73.

161 Truth and Reconciliation Commission of Canada, “Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada” (2015), 25, 32.

162 Indian Residential Schools Settlement Agreement (Canada), 10(C).

at the National Centre for Truth and Reconciliation and remain accessible to former students, their families, and the general public.¹⁶³

- Over the course of five months, statement-takers for the Kenyan TJRC were dispatched across the country to collect statements from perpetrators, victims, and witnesses. Because some individuals were either unwilling or unable to record statements during this initial statement-gathering period, the TJRC continued to take and receive statements and memoranda during the hearing stage. In total, the TJRC took 42,465 statements, as well as 1,828 memoranda with lengthier narratives about the conflict.¹⁶⁴
- In Peru, the CVR collected the testimony of approximately 17,000 persons through its central office in Lima and through its regional offices. In addition to receiving testimony, CVR staff visited 129 provinces and 509 districts of Peru to record testimony from victims who were most affected. The CVR was also able to interview and collect testimony from major actors and high-level leaders involved in the conflict.¹⁶⁵
- The Mauritian TJC also launched an oral history project via its designated research team (staffed by researchers, historians, and anthropologists from the University of Mauritius), which was tasked with conducting approximately 400 interviews, which would be audio-recorded and later transcribed.¹⁶⁶ See Box 4 for more about this project.
- In cases where victims may be located abroad, the failure to provide them with an avenue to participate risks creating an incomplete record. The Guatemalan CEH's staff gathered evidence in refugee camps in Mexico, the US, Canada, and some countries in Europe where Guatemalan refugees were located.¹⁶⁷

For commissions in the US on racial injustice, the task of collecting testimony may be enormous. Such commissions will therefore benefit from employing a wide variety of these testimony collection efforts and to think innovatively about how to facilitate participation. Testimony is essential for ensuring a commission can achieve its aim of determining truth, but affected communities must feel as though they are given an appropriate and meaningful avenue to participate in this process. Commissions in the US should be flexible regarding the format of evidence to minimize the burden on victims to recount their experiences, avoid re-traumatization, and to account for any limitations in education, literacy, and access to technology.

Hearings

Hearings play a powerful role in allowing victims to reassert their dignity.¹⁶⁸ Hearings—which can be open to the public, depending on the needs of those who participate—not only provide a means for the commission to collect additional facts, but they can also provide a forum for victims to reclaim the narratives around atrocities, confront perpetrators, and generate solidarity and empathy within an otherwise polarized and traumatized society.

163 Truth and Reconciliation Commission of Canada, “Honouring the Truth, Reconciling for the Future,” 28 and 32.

164 Truth, Justice and Reconciliation Commission (Kenya), “Report of the Truth, Justice and Reconciliation Commission, Vol. 1,” 85-87.

165 Truth and Reconciliation Commission of Peru, “Final Report,” Annex 4 (2003); Truth and Reconciliation Commission of Peru, “Balance TRC.”

166 Truth and Justice Commission (Mauritius), “Contemporary History, Culture and Society: Research Reports, Technical Studies and Surveys, Vol. 3” (October 2011), 3-5; Croucher, Houssart, and Michel, “The Mauritian Truth and Justice Commission,” 338.

167 Stappers, “Guatemalan Experience in Dealing with the Past.”

168 ICTJ, “Public Hearings: Platforms of Truth, Dignity, and Catharsis,” March 24, 2017, www.ictj.org/news/public-hearings-platforms-truth-dignity.

Box 4: An Oral History Project in Mauritius

Given the relatively short amount of time granted by its mandate, the members of the Research Team of the Mauritian TJC were assigned to different regions of the country, where they set about identifying key interviewees by distributing a questionnaire about the nature of the study and the types of topics it would cover. The interviews covered the islands of Mauritius and Rodrigues, Agaléga, Chagos, and the interviewees consisted mainly of men and women over the age of 50 who included Mauritians, Rodriguans, Agaleans, and Chagossians, and who identified themselves as descendants of slaves. The interviewees were assured of the survey's confidentiality and signed consent forms for their participation.

In the interviews, the Research Team asked open-ended questions to allow the respondents to narrate their own stories around the topics that were important to them and thereby get a more accurate depiction of their experiences. However, it became clear that the process had limitations. For instance, many interviewees had low levels of literacy and were unable to read the questionnaire, and some interviewees distrusted interviewers who either did not speak their native language or were not from their native region. Many interviewees were not even aware of the existence of the TJC, making it even more difficult for the team members to win the trust and participation of the local people. Lastly, given the sensitive and often emotional nature of the interview questions, the interviews could last for long periods of time and the process of transcribing the audiotapes was time-consuming.

In total, the team narrowed their original 400 interviews down to 200 that addressed the following topics: (1) the experience of inverse and adverse racism; (2) contributions of slaves and their descendants to the economic, political, social, and cultural life of Mauritius; (3) perceptions of slavery and its consequences; (4) perceptions of descendants of slaves and indentured laborers; (5) life histories of the individuals, their parents, and grandparents; (6) particular constraining experiences of lives in *cités* (coastal and non-coastal) and occupation; (7) causes of illiteracy; (8) causes of landownership and loss of land; (9) perceptions of other ethnic and cultural groups and their histories; (10) experience at workplaces, taking into account social, ideological, psychological, and historical factors; and (11) expectations and hopes for the future.*

*Truth and Justice Commission (Mauritius), "Contemporary History, Culture and Society, Vol. 3," 3-5.

For those victims who want an opportunity to testify publicly, public hearings provide victims with an important platform through which their suffering, often denied and unrecognized, can be heard and acknowledged. The effects can be "multiple and reinforcing. Victims derive satisfaction from asserting their dignity in a public forum. Commissions strengthen their public legitimacy in an often polarized public. Sectors of society that were numb to the pain of victims may find within them a renewed sense of solidarity, bringing with it a willingness to discuss a denied past."¹⁶⁹ Accordingly, public hearings are a common feature among commissions, and typically follow the collection of documents and testimonies. The South African TRC held various types of public hearings, which were frequently televised.¹⁷⁰ The Peru CVR also held public hearings, which were broadcast on state-run radio and television stations to reach as many Peruvians as possible.¹⁷¹

169 Ibid.

170 Truth and Reconciliation Commission of South Africa, "Truth and Reconciliation Commission of South Africa Report, Vol. 1," 357-58.

171 Truth and Reconciliation Commission of Peru, "Hatun Willakuy," 360.

Some commissions have also held confidential hearings as a form of protection for those providing testimony. For example, in Guatemala, witness hearings took place confidentially because many of the witnesses feared retribution.¹⁷² However, as a result, this testimony was sealed from the public and victims could not benefit from public sharing and acknowledgment of their stories and the harms that were suffered. In such circumstances, a commission will be required to find other ways to acknowledge victims' experiences.

In setting up hearings, a commission must consider the following:

- **Where.** Hearings can take place in one central location, several central locations, or across a broad geographic area on a grassroots basis. This decision may depend on resources, geography, and the ease with which participants can travel. It may also be influenced by whether the hearings will be simultaneously broadcast on the internet, public television, and/or radio. In addition, special provisions could be made to allow individuals to participate in hearings remotely.
- **What.** Hearings can address specific themes, topics, or purposes. Hearings could be separated on the basis of (among other categories) chronology, form of atrocity, region, gender, and age.
- **Who.** The commission may have already collected significant amounts of testimony from many individuals. However, it is unlikely to have the resources to provide all these individuals with the opportunity to participate in public hearings. The commission will thus need to develop a way to select whose participation in the hearing will be of most benefit to its broader community objectives. This may include both victims and perpetrators. Past commissions have often focused hearings around a specific theme or incident.
- **How.** Hearings can take many forms. For example, hearings could allow victims to deliver personal statements or ask questions of the commissioners. They could also foreground cultural traditions and artistic expression of victims, as was done in Canada through ceremonies, musical performances, poetry, films, and other artistic interpretations.¹⁷³

In considering all the above, the specific needs of the potential participants and affected communities must be assessed. This includes practical considerations. For example, in South Africa, victims were permitted to testify in the language of their choice, with simultaneous translation services.¹⁷⁴ In contrast, the Mauritian TJC hearings were conducted in English and therefore inaccessible to the largely Creole-speaking population.¹⁷⁵

In the US, public acknowledgment of the truth of racial injustice will play a significant role in any commission's work. Public hearings in which victims of racial injustice and affected communities are given the right to be heard (if they so wish) could be important to amplify victims' voices, encourage participation, increase public awareness, and generally bolster the legitimacy of a commission's work. However, public hearings must also be balanced with the need of victims and survivors to have a safe space to share their experiences and express their views. Therefore, a variety of approaches may be necessary, including a combination of private fora and public events that respect the dignity of those who choose to participate in a commission's work.¹⁷⁶ The Kenyan TJRC offers a good example, as summarized in Box 5.

172 United Nations Office for Project Services, "The Operations of the Historical Clarification Commission in Guatemala: A Systemization of Support Office Experiences" (1999), 47.

173 Truth and Reconciliation Commission of Canada, "Honouring the Truth, Reconciling for the Future," 282.

174 Truth and Reconciliation Commission of South Africa, "Truth and Reconciliation Commission of South Africa Report, Vol. 1," 146-47, 283.

175 Croucher, Houssart, and Michel, "The Mauritian Truth and Justice Commission," 344.

176 Ladisch and Roccatello, "The Color of Justice," 8.

Box 5: Public Hearings in Kenya

The Kenyan TJRC held three different types of hearings across several locations: individual hearings, women’s hearings, and thematic hearings. Individual hearings, a common tool of truth commissions, focused on individual testimony. Women’s hearings aimed at creating a safe space for women to discuss gender-based violence and were presided over and attended by women only. Finally, thematic hearings focused on specific types of crimes, events, or groups of victims. These hearings were meant to elicit public testimony on themes deemed important to Kenya’s truth, justice, and reconciliation process. The TJRC held a total of 14 thematic hearings, which addressed topics such as access to justice; economic marginalization and minorities; prisons and detention centers; ethnic tensions and violence; security agencies, extra-judicial killings and massacres; women; and children. The TJRC also recognized the right of children to participate in its proceedings and put safeguards in place in recognition of their vulnerable circumstances. It held hearings focused specifically on crimes and abuses committed against children and provided special protections, such as *in camera* testimony, to allow children to participate safely and effectively. The TJRC gathered about 2,000 statements from children during the course of its mandate.*

*Truth, Justice and Reconciliation Commission (Kenya), “Report of the Truth, Justice and Reconciliation Commission, Vol. 1,” 96-116. Gitari Ndungú, “Lessons to Be Learned.”

As with other methods of information collection and outreach, US stakeholders should think creatively about different types of hearings that might be necessary from the perspective of affected communities and implement several methods to encourage broad participation.

Protections

Protecting the well-being of victims and all who participate in a commission’s work is of paramount importance. As referenced above, given the nature of the issues investigated by these commissions, some have taken measures aimed at protecting those who provide testimony. With respect to hearings, many commissions implemented confidentiality protections, including to prevent the disclosure of the identity of a participant without his or her consent. In certain cases, victims and witnesses may be able to provide information anonymously, as opposed to confidentially. Ultimately, a commission must find an appropriate balance that is sensitive to the needs of participants but also ensures that important information is made available to the public. This may require thinking creatively about how information and narratives can be shared while still respecting victims’ rights, including through the use of pseudonyms, removal of identifying details, or other means. Although the Guatemalan CEH’s hearings were confidential, it developed “100 illustrative cases” which were five to ten-page educational documents that showcased in detail the atrocities experienced by victims.¹⁷⁷

Given the nature of the crimes investigated by a commission, there is a serious risk of retraumatizing victims during their participation in a commission’s work. To address this risk, psychological support services should be made available to participants, and staff that work directly with participants should be given appropriate trauma and sensitivity training. In South Africa, the TRC arranged internal training programs for statement-takers on trauma counselling and emotional and crisis management. It sought to provide psychological support services to victims and any family members who testified at hearings. It further appointed people with formal or informal mental health training in each regional office to ensure that victims were provided

177 Lynn Davies, ICTJ, “The Power of a Transitional Justice Approach to Education: Post-Conflict Education Reconstruction and Transitional Justice” (March 2017), 11.

with adequate support. However, in its final report, the TRC acknowledged that it faced criticism for failing to provide adequate counselling services to victims.¹⁷⁸ Some victims felt that the TRC “did not seem to care about their psychological and emotional well-being.”¹⁷⁹

One critical form of protection is legal protection. Undoubtedly, procedural fairness should be respected for all persons who participate in the commission’s work, including the right to be heard, the right against self-incrimination, and the right to legal representation in appropriate circumstances.¹⁸⁰ However, certain commissions have had the controversial power to grant amnesty in certain instances. In South Africa, one of the primary controversies involved the ability to grant individual amnesties. The implementing legislation permitted individual perpetrators to apply for amnesty if they fully disclosed all relevant facts relating to “acts associated with a political objective” (as defined in the act).¹⁸¹ The TRC’s Amnesty Committee received over 7,000 amnesty applications, and requests were granted in approximately 850 cases.¹⁸² In Kenya, one of the objectives of the TJRC was to provide victims, perpetrators, and the general public a platform for “non-retributive truth telling.” The TJRC was expressly empowered to consider applications for amnesty (subject to certain limitations) and make recommendations accordingly.¹⁸³ However, the existence of such a mechanism created considerable confusion and controversy, and the TJRC ultimately declined to exercise this power.

Above all, commissions in the US must ensure that they provide appropriate protection and support to victims and participants before, during, and after their participation. These measures and procedures should be decided in advance of their participation and determined during the preparatory phases of a commission’s work. Staff of any commission should receive adequate training on dealing with victims of trauma and with vulnerable populations.

At all times, principles of procedural fairness must be respected. With respect to potential amnesty and pardon-based programs, this is extremely unlikely to be acceptable in the US context (or possible, given the separation between any commission and the criminal justice system), but, in any event, should be implemented only if acceptable to the affected communities.

Public Outreach

A commission must prioritize public outreach. Indeed, without public engagement, a commission’s work may be futile. Almost all commissions engage in dedicated public outreach efforts, the objectives of which were generally three-fold. First, to educate the public regarding the commission’s work to aid in the collection of evidence. Second, as a more general effort to raise awareness among the public regarding the events which were subject to the commission’s work. Third, “to create forums for two-way communication through dialogues, consultation, and participatory events at all stages of the [transitional justice] process.”¹⁸⁴ Outreach efforts should ensure that the public understands the commission’s mission and achievements and allow the public to openly ask questions, express concerns and critiques, and communicate their needs and priorities.¹⁸⁵

178 Truth and Reconciliation Commission of South Africa, “Truth and Reconciliation Commission of South Africa Report,” 146, 283-84, 289-91.

179 Timothy Sizwe Phakathi and Hugo van der Merwe, “The Impact of the TRC’s Amnesty Process on Survivors of Human Rights Violations,” in Chapman and van der Merwe (eds.), *Truth and Reconciliation in South Africa*, 128.

180 González and Varney (eds.), “Truth Seeking,” 12.

181 Promotion of National Unity and Reconciliation Act 34 of 1995 (South Africa), Sections 3(1)(b), 20(2).

182 Truth and Reconciliation Commission of South Africa, “Amnesty Hearings and Decisions,” www.justice.gov.za/trc/amntrans/index.htm; South Africa, Truth and Reconciliation Commission of South Africa Report, Vol. 1, 267.

183 Truth, Justice and Reconciliation Act (Kenya), Sections 5(1)(f), 5(g), 5(i).

184 Ramírez-Barat, “Making an Impact,” 4.

185 Ibid., 8; González and Varney (eds.), “Truth Seeking,” 11-12.

Public outreach efforts can include a variety of activities designed to meet the needs of different community members, including hearings (as described above), community visits, website publications, brochures, public events, television and radio programs, and press briefing sessions. For example, the South Korean TRC encouraged widespread participation by creating a website and making applications available at local government offices. The TRC also raised awareness of its work by appearing in television interviews, making visits to historical events and sites, and working with NGOs to help publicize its work.¹⁸⁶ In Guatemala, the CEH's outreach campaign involved publicizing its operations through radio, television, and leaflet campaigns, as well as in-person visits to communities. CEH staff visited more than 2,000 communities in Guatemala, as well as refugee camps and communities in Mexico, the US, Canada, and some countries in Europe where Guatemalan refugees were located. Due to their efforts, the engagement of rural communities with the CEH's investigation was much higher than anticipated.¹⁸⁷ In Peru, given the broad geographical distribution of victims, the CVR established four outreach field offices in the regions most affected by violence. These were complemented by mobile field offices that travelled within the region "to inform the population about the commission, organizing rural fairs and meetings in the villages with personnel who spoke the local language, Quechua."¹⁸⁸ The commission also took steps to engage with teachers and students. It signed a cooperation agreement with the Ministry of Education, designated 2002 as the "the Year of Truth and Reconciliation," and encouraged students and teachers to participate in its workshops and hearings.¹⁸⁹

As with all a commission's efforts, sufficient time and funding for public outreach are essential. In Kenya, due to budgetary constraints, the TJRC did not establish its Civic Education and Outreach Department until over two years after the TJRC was established and was forced to cut short its rural outreach activities after conducting them in only two provinces.¹⁹⁰

The media and NGOs can play an important role in public outreach efforts. In Peru, media and journalists accompanied CVR staff members during their investigations and reported on the commission's work.¹⁹¹ NGOs also ran capacity building workshops at a grassroots level that brought together victims and community leaders to develop a joint reparations proposal. Through these outreach efforts, NGOs were able to identify the needs of victims and collect information about the nature of harms suffered.¹⁹² Given its funding constraints, the Kenyan TJRC relied on partnerships with NGOs to expand the reach of its civic and public education activities. Small, local NGOs played an important role in educating the public and mobilizing people for public hearings, and, in addition, assisted the TJRC with staffing and training statement-takers.¹⁹³ However, commissions cannot rely entirely on the support of external organizations, particularly where there is any cause for concern regarding the commission's legitimacy. Questions over the TJRC's independence caused certain human rights organizations to express concerns to the public regarding its legitimacy and contributed to a general sense of pessimism among the Kenyan population towards the commission's work.¹⁹⁴

186 Enforcement Decree of the Basic Act on Reconciliation of Past Matters for Truth and Reconciliation (2020) (South Korea), Article 3; Truth and Reconciliation Commission (South Korea), "Survey Report for the First Half of 2006, May 31, 2006," 55-60.

187 Stappers, "Guatemalan Experience in Dealing with the Past."

188 Ramírez-Barat, "Making an Impact," 10-11.

189 Clara Ramírez-Barat, ICTJ, "Engaging Children and Youth in Transitional Justice Processes: Guidance for Outreach Programs" (November 2012), 15.

190 Truth, Justice and Reconciliation Commission (Kenya), "Report of the Truth, Justice and Reconciliation Commission, Vol. 1," 81, 147.

191 Truth and Reconciliation Commission of Peru, "Hatun Willakuy," 360.

192 Ramírez-Barat, "Making an Impact," 23.

193 Truth, Justice and Reconciliation Commission (Kenya), "Report of the Truth, Justice and Reconciliation Commission, Vol. 1," 81; Bosire and Lynch, "Kenya's Search for Truth and Justice," 273.

194 Bosire and Lynch, "Kenya's Search for Truth and Justice," 275.

Any commission in the US must develop a comprehensive outreach strategy that can reach and engage all members of affected communities (including individuals with different educational backgrounds, ages, and access to technology) and facilitate their participation in the form that allows them to feel comfortable and respected. Outreach efforts should also engage diverse stakeholders, including government authorities, NGOs, and other organizations, whose support will be a critical component of the overall efficacy of a commission's work. Box 6 discusses Canada's approach to engaging various stakeholders at different levels.

Box 6: National and Community Events in Canada

The Canadian TRC's public engagement efforts can be categorized into three groups: national events, community events, and individual statement-taking and truth sharing. The national events were to be "a mechanism through which the truth and reconciliation process [would] engage the Canadian public and provide education about the IRS system, the experience of former students and their families, and the ongoing legacies of the institutions." Each national event had seven objectives, including offering opportunities for survivors and their families to share their experiences with high level government and religious leaders and each other, and allowing survivors and communities to share their thoughts on reconciliation. Seven national events were held between June 2010 and March 2014, with an estimated 155,000 in attendance, more than 9,000 of whom were registered IRS survivors. Each one consisted of a range of activities. For example, the first day was called "Education Day" and focused on educating students regarding Canada's hidden history of the IRS and honoring Canada's rich indigenous culture. Before the event, participating schools taught students about the residential school system and the TRC process and led follow up reflections for those who attended the event. For the remaining days of the national events, there were several different spaces for survivors to give their testimony privately, share it in an intimate listening circle facilitated by an elder, or give their testimony in a larger public forum.

Unlike the mandatory national events, community events were each to be designed by an individual community to respond to the particular needs of IRS survivors and their families. Accordingly, these events were more focused on the narratives surrounding the local impact of the IRS system, given that every community would have interacted with it in its own unique way. This enabled communities to increase awareness and understanding of not just how the IRS system impacted the nation as a whole, but also how their connections to the IRS affected their neighbors. Community events were particularly useful at spreading awareness to local government officials and churches. Overall, more than 77 Canadian cities and towns held 238 days of local hearings, town halls, and other proceedings. These events accomplished goals similar to those of the national events with a more local focus, allowing each community to begin its own truth and reconciliation process and develop its unique IRS narrative.*

*Indian Residential Schools Settlement Agreement (Canada), 10; Truth and Reconciliation Commission of Canada, "Honouring the Truth, Reconciling for the Future," 25; ICTJ, "Canada's Youth Face Legacy of Indian Residential Schools at 'Education Day' Event" (April 24, 2013).

Finally, in the US, as elsewhere, the media will play a significant role. "Without the active participation of media as agents of social change fully aware of their impact or responsibility regarding the process, the sense of ownership of transitional justice efforts in key constituencies will remain elusive, even with the most sophisticated outreach effort."¹⁹⁵ The US's polarized

195 Refik Hodzic and David Tolbert, ICTJ, "Media and Transitional Justice A Dream of Symbiosis in a Troubled Relationship" (September 2016), 17.

media landscape will be a challenge for any commission, and it will be important to develop an inclusive and unbiased media strategy.

Cultural and Individual Interventions

Truth commissions undertake their work with objectives such as acknowledgment, healing, prevention, and reconciliation in mind. Each of these are long-term goals that commissions can contribute to but not achieve by themselves. In addition to the recommendations that they articulate for broader reform, truth commissions can initiate or support journeys of cultural and personal change beyond the bounds of institutions. The former Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has emphasized the value of such interventions with regard to prevention, citing as key areas formal and informal education; artistic initiatives such as museums, art exhibitions, monuments, and theater; and archives and documentation.¹⁹⁶ Similar interventions can include programs with healing or reconciliation-oriented activities such as conflict mediation, community dialogue, psychosocial programs, counselling and support, and traditional ceremonies or rituals.¹⁹⁷ Such processes can be integrated into, complementary to, and/or supported or facilitated by official truth-telling processes, as was the case in Kenya and Canada.

One common element of such interventions is storytelling and dialogue, which can be initiated by truth commission hearings and outreach and community engagement but should be envisioned as an ongoing and long-term journey. Advocates for truth seeking in the US frequently speak about the importance of such processes. As one participant in the Maryland Lynching Truth and Reconciliation Commission's opening hearing explained in 2021, the hope was that the process would open a space "for us to tell the narrative in a way that resonates with people from all walks of life and moves us toward not just the idea of equal justice under the law but the action of equal justice under the law."¹⁹⁸

The Final Report

One of the key tangible outcomes of a commission's work is its final report. These reports can be lengthy and are often produced in several volumes, covering everything from the procedural history of the commission and any challenges it faced executing its mandate, along with detailed summaries of its findings, often organized by subject or time period, and a list of detailed recommendations. Box 7 explains how the Mauritian TRC divided its final report.

If done successfully, a report aims to accomplish the goal of creating a historical record, balanced against the practical fact that a report cannot address every testimony or document provided to it. In this regard, provisions for preserving these records in a different way (in a museum, library, or otherwise) can provide a valuable avenue to ensure those who participated in the process feel acknowledged and the public can access their words. A commission on racial injustice in the US might collect thousands of pieces of individual testimony. In this context, creating a memorial, library, or other means of preserving and presenting such testimony may be necessary, taking into account privacy and confidentiality concerns.

The final report must be accessible to the public. Recent commissions have sought to make their full reports accessible online while simultaneously publishing short companion versions that

196 UN General Assembly, "Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence," A/72/523, 12 October 2017, 19-20.

197 See Kelly McKone, United States Institute of Peace, "Reconciliation in Practice" (2015); Brandon Hamber, "Healing," in David Bloomfield, Teresa Barnes, and Luc Huyse (eds.), *International IDEA, Reconciliation after Violent Conflict: A Handbook* (2003); Seils, "The Place of Reconciliation in Transitional Justice."

198 Ladisch, "Opening Space for Healing and Change."

Box 7: The Final Report in Mauritius

The Mauritian TRC issued its report in November 2011. It comprises four volumes, as well as two additional volumes of digital materials.

Volume I contains the commission's report and covers all topics falling under its mandate, namely (1) the history of the slave trade, slavery, and indentured labor; (2) the economics of slavery and indenture; (3) legacies, consequences, and continuities; (4) racism and casteism; (5) education and health; (6) land reform; (7) social justice; and (8) the commission's findings and recommendations.

Volume II consists of papers prepared by the Land Team, which focused on addressing land ownership issues in the country. This volume also contains the results of the team's analysis on the 340 claims concerning land dispossession. Volume II is divided into a section on the history of land tenure, detailed studies on select topics, and the main findings of the research.

Volumes III and IV consist of technical papers, research reports, and surveys, which were conducted by the Research Team. Specifically, Volume III consists of studies of contemporary Mauritius, as well as interviews with local Mauritians regarding land claims. Volume IV consists of studies by specialists in the field of history, economics, anthropology, and psychology, using archival material. Both volumes contain the recommendations of the individual people and the specific teams (e.g., Research Team, Land Team) that undertook the studies, as well as a substantial set of references.

Volume V, in digital format, is the collection of all audio and film material collected by the TJC. This volume is divided into: (1) a hearings section that includes the audio and transcripts of the hearings; (2) the non-confidential oral history interviews and the transcripts of those interviews; and (3) a database of news articles, photographs, and film clips documenting the work of the TJC and the TJC's interviews and site visits.

Volume VI consists of databases created by the TJC for use by other institutions, such as the Genealogy Centre, the Land Research Unit, the Conservation Institute, and the Slave Trade and Indentured Immigration Database. This volume also contains the substantial amount of data collected by the TJC, in the form of digital photographs of documents and reports.*

*Truth and Justice Commission (Mauritius), "Report of the Truth and Justice Commission, Vols. 1-6" (November 2011).

set out key findings and recommendations. Creating two complementary documents—a long report that includes a commission's full scope of work and findings as well as a shorter report summarizing key points and marketed toward public consumption—can be an important step in fulfilling a commission's objectives to publicly acknowledge truth and shift public discourse. However, as with public outreach campaigns, a commission must be mindful of language, literacy, technological, and other needs. In addition to releasing long and short form reports on the internet, the commission must develop other ways to convey the findings of the commission, including televised broadcasts presenting its findings, radio programs, visual representations (like photography exhibits), and others.

The review process prior to the issuance of draft reports must be transparent and legitimate. Where state authorities are given the opportunity to review a report prior to finalization, transparency and other measures must be put in place to avoid any perception that those actors can influence the content of the report—for example, through the public release of versions of reports that are provided to state authorities. As discussed in Box 8, the release of the Kenyan

Box 8: The Final Report and Political Influence in Kenya

The Kenyan TJRC did not sufficiently insulate itself from political influence in the preparation of its final report. The commission had aimed to submit its report several months before the presidential election scheduled for March 2013. The aim was, in part, to give civil society sufficient time to read and digest its findings so they could factor it into their evaluation and selection of political candidates. However, certain commissioners supported seeking an extension to the report's deadline until after the general election. At some point, a draft of the final report was shared with the Parliamentary Committee on Justice and Legal Affairs. Shortly after that meeting, Parliament granted an extension to May 2013, after the election. At this time, the ministry also warned the commissioners to be careful and conservative about their findings in the final version. This extension alarmed donors and civil society organizations, who expressed concern that the request was politically motivated, especially because the report contained damning findings with respect to candidates in the upcoming election.

In a dissenting opinion, a group of commissioners wrote that the TJRC had been coerced into giving an advance copy of the final report to the Office of the President. After Uhuru Kenyatta was elected president in March 2013, his office reportedly exerted pressure on the TJRC in the form of bribes and threats to eliminate findings unfavorable to the president and his family. In particular, the president pushed to omit portions of the TJRC's findings on the irregular and illegal acquisition of land, which, according to testimony, the president's father was deeply involved in, as well as excerpts detailing human rights violations that implicated the president and his family. The president's cabinet members appealed to commissioners and staff who were favorable to him and directed them to make the desired changes immediately without consulting the others.*

*Slye, *The Kenyan TJRC*, 13-17; Truth, Justice and Reconciliation Commission (Kenya), "Report of the Truth, Justice and Reconciliation Commission," Dissent by International Commissioners.

TJRC's final report was marred by allegations of direct political influence, resulting in certain commissioners issuing a dissenting opinion.¹⁹⁹ In South Korea, the TRC chair and other members of the commission were replaced by the new conservative government in its final years. Upon the release of the TRC's report, a group of past commissioners announced that they were regularly meeting to draft an alternative version because the existing one did not adequately cover their work and findings.²⁰⁰ Those involved with the commission also alleged that the official final report avoided covering controversial issues.²⁰¹ All of this undermined the overall legitimacy and perception of the TRC's work. The approaches of different commissions to the final report are summarized in Table 4.

The Recommendations

A commission's work will typically conclude with the issuance of recommendations based on its findings. Given the scope of their mandates, some commissions have issued hundreds of different recommendations. They generally constitute actions that can be taken by other actors to contribute to the achievement of the commissions' objectives but that are beyond the direct

199 Truth, Justice and Reconciliation Commission (Kenya), "Report of the Truth, Justice and Reconciliation Commission," Dissent by International Commissioners.

200 Lee Jae Joon, "Truth and Reconciliation Commission Separate White Paper: Controversy over 'Second Report,'" *No Cut News*, January 10, 2011.

201 Han Sang Yong, "Controversy Over the Promotion of a Separate Report by Former Employees of the Truth and Reconciliation Committee," *Yonhap News*, January 10, 2011.

Table 4. Accessibility of Reports

Jurisdiction	Date of issuance	Announcement	Availability
Canada	December 2015	As required by the settlement agreement, the TRC held a closing event. Over several days in May and June 2015, the commissioners read an executive summary of their findings and detailed their 94 calls to action. ^a	The final report is available on government websites in French and English. The National Centre for Truth and Reconciliation was created in November 2015. It holds the repository of statements, documents, and other materials that were collected by the TRC. ^b
Guatemala	February 1999	The report was presented to representatives of the government and the UN Secretary General. ^c	Released prior to the use of the internet, the final report was given only a limited print run and therefore was only available to a select few. A summary of its findings was produced in both Spanish and English and printed in time for the public ceremony revealing the final report. However, the report remains inaccessible to many, including victims in the Mayan community, due to literacy levels. ^d
Kenya	May 2013	The report was presented to the president. ^e	The report was published on the TJRC's website, and an abridged version was published in major Kenyan newspapers. The TJRC website where the report was made available was reportedly taken down one or two years later. ^f
Mauritius	November 2011	The report was presented to the president. ^g	The report was made publicly available. However, a 2017 survey of 35 descendants of slaves found that none were aware of the report. This may be attributed to the fact that the report was never translated to Creole, and the report was several hundred pages and therefore inaccessible to most citizens. Press coverage has also been described as "unenthusiastic or even non-existent." ^h
Peru	August 2003	The report was presented to the president, the president of Congress, and president of the Supreme Court.	After presenting the final report to the government, the CVR presented it to Peruvian society. During a solemn ceremony in Ayacucho, the region most gravely affected by violence, the commission's president, Salomón Lerner, spoke to the crowd in an address that was translated to Quechua. The CVR also conveyed its findings and conclusions through a photography exhibit called Yuyanapaq, meaning "In Order to Remember" in Quechua. The purpose of this exhibit was to make the CVR's work accessible to those Peruvians who would not read the extremely lengthy final report. Given the length of the report, the CVR also wrote an abbreviated version entitled "Hatun Willakuy," a Quechua name meaning "great story." At 353 pages, it is more manageable than the final report. ⁱ

(continued)

Table 4 (continued)

Jurisdiction	Date of issuance	Announcement	Availability
South Africa	October 1998/ March 2003	The report was presented to the president.	The final report is available in print and on the TRC's website, hosted by the South African Department of Justice and Constitutional Development. The first five volumes were published in 1998 and the final two in 2003.
South Korea (2005)	December 2010	The report was made available to the public on its website.	The final report was uploaded to the TRC's website, and spans four volumes. ^j However, the TRC was limited in its ability to publicize the report, as it had run out of funds and was shut down following its issuance. ^k Public acceptance of the report was further stymied by a statement in January 2011 from past commissioners who announced that they were drafting an alternative report because they did not believe that the official one adequately covered the work they had done. ^l

NOTES: ^aGovernment of Canada, "TRC National Closing Ceremony," June 1, 2015, www.canada.ca/en/news/archive/2015/06/trc-national-closing-ceremony.html.

^bIndian Residential Schools Settlement Agreement (Canada), 12; National Centre for Truth and Reconciliation Archives, <https://nctr.ca/>.

^cUnited States Institute of Peace, "Truth Commission: Guatemala," February 1, 1997.

^dElizabeth Oglesby, Carnegie Council on Ethics and International Affairs, "Historical Memory and the Limits of Peace Education: Examining Guatemala's 'Memory of Silence' and the Politics of Curriculum Design" (June 2004), 4.

^eGitari Ndungú, "Lessons to Be Learned."

^fSlye, *The Kenyan TJRC*, 44-45.

^gTruth and Justice Commission Act (Mauritius), Article 13.

^hCroucher, Houssart, and Michel, "The Mauritian Truth and Justice Commission," 343.

ⁱAmnesty International, "Peru: The Truth and Reconciliation Commission — A First Step Towards a Country Without Injustice," August 25, 2004, 4; Juan Forero, "Peru Photo Exhibit Captures Pathos of 20 Years of War," *New York Times*, June 27, 2004; Peru, "Hatun Willakuy."

^jTruth and Reconciliation Commission (South Korea), Information, www.jinsil.go.kr/fnt/nac/selectNoticeList.do?bbsId=BBSMSTR_000000000715.

^kDong-Choon, "Korea's Truth and Reconciliation Commission," 161.

^lYong, "Controversy Over the Promotion of a Separate Report by Former Employees of the Truth and Reconciliation Committee;" Joon, "Truth and Reconciliation Commission Separate White Paper."

capacity of the commission itself. In fact, the implementation of such recommendations is fundamental to those goals that go beyond understanding what happened. This includes protection of victims' rights, pursuit of accountability, facilitation of reconciliation, and catalyzation of transformation. While recommendations can cover an immense range of areas, the following highlights common recommendations and those that may be particularly relevant in the US.²⁰²

- **Formal apologies by government authorities, private actors, organizations, or religious institutions.** Official acknowledgment of victims' suffering, the government's and/or private entities' complicity in this suffering, and a public apology for wrongdoing are important steps in the transitional justice process.²⁰³ Apologies can be on a macro level (i.e., addressed

²⁰² See generally Alexander Mayer-Rieckh and Howard Varney, Geneva Centre for Security Sector Governance, "Recommending Change: Truth Commission Recommendations on Institutional Reforms: An Overview."

²⁰³ Ruben Carranza, Cristián Correa, and Elena Naughton, ICTJ, "More Than Words Apologies as a Form of Reparation" (December 2015).

to victims at large), or individualized (i.e., from a perpetrator to a specific victim and/or their family). Commissions have recommended public apologies in numerous instances, including Peru,²⁰⁴ Mauritius,²⁰⁵ Kenya,²⁰⁶ and Canada.²⁰⁷

- **Constitutional and legislative reform.** Many commissions have recommended constitutional and legislative reform. For example, in Guatemala, the CEH recommended steps to eliminate the discrimination of indigenous people, including through the implementation of the Agreement on Identity and Rights of Indigenous Peoples in its entirety.²⁰⁸ The Kenyan TJRC recommended that the government remove obstacles facing minorities from acquiring citizenship.²⁰⁹
- **Reparations.** Several commissions recommended individual reparations mechanisms; however, only a handful of such recommendations have been implemented. For commissions contemplating compensation as a form of reparation, a recurring question is who should be entitled to compensation and in what order of priority, particularly where resources are limited. In South Africa, the TRC decided it would create a finite or “closed” list of victims, such that only those victims who were identified during the course of the TRC’s work (either by making personal statements, being named in statements, or identified through the amnesty process) would be entitled to reparations payments.²¹⁰ In Peru, an individual reparations program was finally established in 2011, although this program was subject to criticism because of its narrow application.²¹¹ Community-based reparation measures are a common feature among commission recommendations. For example, compensation could be used for a designated community purpose, like the building of community centers, hospitals, schools, or other institutions. In South Africa, the TRC identified several community rehabilitation measures among its recommendations, including the creation of a resettlement program for displaced persons, mental health services, the creation of local treatment centers, and education reforms such as building community colleges and youth centers.²¹²
- **Institutional reform: Independent and impartial oversight bodies to monitor and address systemic issues.** The creation of a national human rights commission or ombudsman is an institutional reform that can contribute to greater accountability for the government’s observance of human rights. For example, the Peruvian CVR recommended “[e]stablish[ing] a human rights defense system by creating specialized agencies in the police, judiciary, and Public Ministry, especially in areas where the violence had the greatest impact.”²¹³ The Kenyan TJRC called for the creation of a Special Rapporteur on Sexual Violence.²¹⁴ The South African TRC recommended the creation of a human rights bureau in government ministries.²¹⁵

204 Truth and Reconciliation Commission of Peru, “Balance TRC,” www.cverdad.org.pe/ingles/lacomision/balance/index.

205 Croucher, Houssart, and Michel, “The Mauritian Truth and Justice Commission,” 342.

206 Truth, Justice and Reconciliation Commission (Kenya), “Report of the Truth, Justice and Reconciliation Commission, Vol. 4,” 9-10.

207 Truth and Reconciliation Commission of Canada, “Honouring the Truth, Reconciling for the Future,” 223.

208 Commission for Historical Clarification (Guatemala), “Report of the Commission for Historical Clarification: Conclusions and Recommendations” (1999), 66.

209 Truth, Justice and Reconciliation Commission (Kenya), “Report of the Truth, Justice and Reconciliation Commission, Vol. 4,” 47.

210 Truth and Reconciliation Commission of South Africa, “Truth and Reconciliation Commission of South Africa Report, Vol. 1,” 86.

211 Julie Guillerot, ICTJ, “Alive in the Demand for Change: Transitional Justice and Prevention in Peru” (July 2021), 24.

212 Truth and Reconciliation Commission of South Africa, “Truth and Reconciliation Commission of South Africa Report, Vol. 5,” 190-94.

213 Truth and Reconciliation Commission of Peru, “Hatun Willakuy,” 305.

214 Truth, Justice and Reconciliation Commission (Kenya), “Report of the Truth, Justice and Reconciliation Commission, Vol. 4,” 36.

215 Truth and Reconciliation Commission of South Africa, “Truth and Reconciliation Commission of South Africa Report, Vol. 5,” 311.

- **Institutional reform: Vetting, codes of conduct, and other policies.** The Guatemalan CEH recommended limited vetting of individuals in the army and police to remove those who were associated with past atrocities.²¹⁶ In Kenya, the TJRC recommended additional reform measures like the drafting of a new police code of conduct and ethics.²¹⁷ In Guatemala, the CEH also recommended reforming military and security doctrines based on new frameworks describing the relationship between those forces and the public.²¹⁸ In South Africa, the TRC recommended the incorporation of human rights curricula into the training of law enforcement personnel²¹⁹ and issued several specific recommendations regarding police reform, including appropriate training for security forces.²²⁰
- **Memorials and commemorations.** Commissions have recommended the creation of public memorials in order to honor the resilience of victims, and as an acknowledgment of violations. Such memorials can “establish a public record and serve as a bastion against denial and recurrence.”²²¹ For example, the commissions in Canada²²² and South Korea²²³ recommended the creation of public memorials and museums as a means to preserve their findings, honor victims, and facilitate public dialogue. The South African TRC set out certain measures for symbolic reparations for victims, including exhumations, reburials, alternative ceremonies, memorials and monuments, and a national day of remembrance.²²⁴
- **Educational measures.** Commissions have also recommended implementing formal and non-formal education programs. Many have proposed formal education programs or reforms for children and youth, including the addition of human rights, civics, and peace education, as well as revising the content of the history taught in schools based on commissions’ findings. This can include education programs to teach students about past atrocities (for example, Canada²²⁵), develop new curriculum to prevent future atrocities (for example, Kenya²²⁶), as well other education reforms (for example, South Africa²²⁷). Non-formal education initiatives have typically been aimed at those outside the formal education system. For example, the Canadian TRC recommended “investment in culturally appropriate parenting programs for Aboriginal families.”²²⁸
- **Criminal prosecution.** Subject to the scope of its mandate, some commissions prepared investigative files for prosecution of perpetrators in tandem with their reports. In Peru, the CVR prepared 43 well-documented initial investigations that were presented to the national prosecutor for immediate action.²²⁹ A quarter of these cases resulted in guilty verdicts—a

216 Commission for Historical Clarification (Guatemala), “Report of the Commission for Historical Clarification: Conclusions and Recommendations,” 62, 64.

217 Truth, Justice and Reconciliation Commission (Kenya), “Report of the Truth, Justice and Reconciliation Commission, Vol. 4,” 36.

218 Commission for Historical Clarification (Guatemala), “Report of the Commission for Historical Clarification: Conclusions and Recommendations,” 60-65.

219 Truth and Reconciliation Commission of South Africa, “Truth and Reconciliation Commission of South Africa Report, Vol. 5,” 311.

220 Ibid.

221 ICTJ, “Truth and Memory,” www.ictj.org/truth-and-memory.

222 Truth and Reconciliation Commission of Canada, “Honouring the Truth, Reconciling for the Future,” 283-84.

223 Truth and Reconciliation Commission (South Korea), “Comprehensive Report Vol. I” (December 2010), 208.

224 Truth and Reconciliation Commission of South Africa, “Truth and Reconciliation Commission of South Africa Report, Vol. 5,” 188-90.

225 Truth and Reconciliation Commission of Canada, “Honouring the Truth, Reconciling for the Future,” 234-39.

226 Truth, Justice and Reconciliation Commission (Kenya), “Report of the Truth, Justice and Reconciliation Commission, Vol. 4,” 62.

227 Truth and Reconciliation Commission of South Africa, “Truth and Reconciliation Commission of South Africa Report, Vol. 5,” 193.

228 Truth and Reconciliation Commission of Canada, “Honouring the Truth, Reconciling for the Future,” 144.

229 Defensoría del Pueblo (Peru), Resumen Ejecutivo, Informe Defensorial No. 162: A Diez Años De Verdad, Justicia Y Reparación: Avances, Retrocesos y Desafíos de un Proceso Inconcluso (2013), 19-20.

relatively significant portion when compared to the results of prosecutions in other serious human rights violation that did not receive direct support from the CVR.²³⁰

In the US, two cross-cutting elements of relevance to justice claims are reparations and reform. First, as a foundational matter, for any commission in the US addressing racial injustice, the oppressed communities must be consulted to determine the form and parameters of appropriate reparative measures. For example, one of the key questions that should be the subject of consultations is how to define and identify persons or communities who should receive reparations. Moreover, commissions should also consider the work that has already been done in the US by scholars and organizations to assess the types of reparative measures that would be desirable and most effective for the context.

Regarding the types of reparative measures, the injustices committed against Black and other oppressed communities span generations and manifest in numerous forms. Therefore, a comprehensive and multi-faceted approach to reparations will be required, and a combination of the types of measures described above will need to be adopted in parallel.²³¹

This array of measures may include financial compensation. While there are examples in the US and abroad of the provision of financial compensation for violations arising from discrimination,²³² none are of the scale of what might be contemplated in the US if recipients were to include, for example, all individual descendants of slaves. However, this should not deter the consideration of a large-scale compensation program if it becomes clear that compensation is a necessary component of reparations in this context. In this regard, as noted above, compensation need not only be individual; it can also be collective and could be used to build new institutions and services for affected communities.

Given the deeply rooted and lengthy history of racial injustice in the US, symbolic measures will be an important, but not sufficient, component of reparations. To date, the US government has yet to apologize to Black communities for slavery, racism, and other grave injustices or the harms suffered as a result. A formal, public, and nonpartisan apology by responsible government authorities will be a necessary component of any transitional process that seeks to address racial injustice in the US.²³³ As noted above, building memorials, museums, national holidays, and taking steps to destroy symbols of violations are common recommendations. In the US, symbolic measures could include building memorials and museums that present the evidence collected during a commission's work and taking down confederate statues, flags, references to racist political leaders, and other imagery from public facilities. However, symbolic reparations are unlikely to be sufficient to repair impacted communities for the extent of the harm suffered.

In addition, racial justice in the US must include law enforcement and criminal justice reform. Discriminatory policing in the country is as old as the history of slavery, and its consequences against Black communities pervade all aspects of life.²³⁴ To achieve the objectives of transitional justice in the context of racism, it is clear that law enforcement and criminal justice systems must be transformed. Any effort in this regard will require a clear and formal commitment from government institutions, including law enforcement agencies and its officers, to fundamental reform and to holding wrongdoers accountable. In addition to acknowledgment and awareness, a commission's recommendations should seek to change the culture of law enforcement and its

230 Ibid.

231 Ladisch and Roccattello, "The Color of Justice."

232 Ibid., 10-11.

233 Ibid., 13-14.

234 Ibid., 14-15.

officers. This will require reviewing and changing the fundamental mission and purpose of law enforcement, as well as proposing measures to change specific law enforcement policies and guidelines, conducting appropriate trainings, implementing sufficient disciplinary mechanisms and procedures, implementing monitoring programs, increasing transparency, and reviewing laws with a view towards expunging or amending those that are discriminatory or legitimize abuse. Consideration should also be given to reviewing and reforming state district attorney's offices to ensure that prosecutorial discretion is not being used to perpetuate racism and discrimination.²³⁵ As an example, in relation to the new national police, the Guatemalan CEH recommended the formation of a "security forces doctrine," enshrining principles such as "service to the community without discrimination of any type and with respect for the multiethnic character of the Guatemalan nation," and promoting measures to support the participation of indigenous persons in the police.²³⁶ Box 9 includes the full text of this recommendation.

Box 9. Public Security Recommendation in Guatemala

Security Forces Doctrine

73. That under the guidance of the Ministry of the Interior, the PNC [National Civilian Police] begin a process of internal reflection in consultation with organisations from civil society, with the aim of producing and defining the doctrine of the civilian security forces, whose bases should be:

- a. service to the community, without discrimination of any type and with respect for the multiethnic character of the Guatemalan nation;*
- b. development of the civilian nature of the police force and the demilitarization of its organisation, hierarchy and disciplinary procedures;*
- c. complete respect for human rights and the consequent investigation, prosecution and conviction of any members who have committed human rights violations;*
- d. respect for democracy and the rule of law; and*
- e. the continuous professional training and instruction of the police at every rank.**

*Commission for Historical Clarification (Guatemala), "Report of the Commission for Historical Clarification: Conclusions and Recommendations," 64.

Finally, for recommendations to be effective, they must be adopted and monitored. A commission's recommendations are generally not binding, and only a few commissions have implemented accountability mechanisms to monitor whether they were in fact considered and implemented. The Guatemalan CEH proposed the establishment of an accountability mechanism to ensure the implementation of its recommendations,²³⁷ but it does not appear that such a mechanism was ever created. The lack of monitoring is not unsurprising given most commissions are disbanded following issuance of the final report. Therefore, in the US, as in any context, the importance of civil society engagement in the aftermath of a commission cannot be understated.

²³⁵ Ibid., 18-19.

²³⁶ Commission for Historical Clarification (Guatemala), "Report of the Commission for Historical Clarification: Conclusions and Recommendations," 64.

²³⁷ Ibid., 67-69.

For example, with appropriate engagement throughout the lifetime of the commission, NGOs can later lobby the government about recommendations that directly affect their work and take the lead on monitoring implementation through publication of regular “scorecards.” In Canada, the national broadcaster CBC News developed a public online status tracker to enable Canadians to hold the federal government accountable for the implementation of the TRC’s 94 Calls to Action.²³⁸ The status tracker “provides up-to-date status reports on each call to action, as well as extensive summaries explaining those status reports. It includes in-depth features and short video documentaries that tell some of the community stories behind the calls to action. It also features residential school survivors sharing their experiences.”²³⁹ Conversely, in Kenya there has been limited implementation of the TJRC’s recommendations and the parliament has refused to even discuss the report. Civil society representatives have also only engaged with the TJRC’s report in a limited way due to a perception that the report was “shelved.”²⁴⁰ While truth commissions can propose that legislative bodies such as Congress develop a plan and strategy for implementing specific recommendations and that existing statutory bodies play a role in monitoring implementation, ultimately civil society will have to be a driving force through targeted and innovative methods.²⁴¹

238 “Beyond 94: Truth and Reconciliation in Canada,” *CBC News*, March 19, 2018.

239 *Ibid.*

240 Johannes Langer, “Are Truth Commissions Just Hot-Air Balloons? A Reality Check on the Impact of Truth Commission Recommendations,” *Desafíos* 29 (2017), 191.

241 Howard Varney, ICTJ, “Transforming Data into a Final Report” (forthcoming).

Conclusion

The US's reckoning with its long history of racial injustice and its consequences must be a multi-pronged effort that will take place at different levels of government and involve the participation and engagement of a wide variety of stakeholders. The concept and practice of transitional justice is one area that offers important insights, lessons, and approaches for such a reckoning, as it emphasizes truth-seeking and other measures and promotes acknowledgment, redress, accountability, memorialization, and prevention.

However, there is also no one-size-fits-all approach to transitional justice, and different approaches might be adopted in parallel in the US at both the subnational and national levels. As US stakeholders consider what approaches are most appropriate for their particular communities, the experiences of the numerous other countries that have undergone a transitional justice process may be instructive. Accordingly, the objective of this report has been to draw upon the experiences of those countries—specifically those who have formed truth commissions—to identify key factors that US stakeholders can take into account as they engage in this important and monumental effort.

As a transitional justice process must be formulated with the specific context in mind, this report does not set out recommendations for how to structure a truth commission to address racial injustice in the US. However, key themes emerge from the experiences of other countries, including the importance of preserving the independence and legitimacy of any truth-seeking process. In this regard, a key lesson across the work of these truth commissions is the critical role that the oppressed communities and civil society must play in the transitional justice process, from its very inception to the formulation, implementation, and monitoring of any truth commission's recommendations. Protecting and respecting the role of the oppressed communities in the transitional justice process is paramount for the process to contribute to fundamental and long-lasting change.

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